

**AMENDED AND RESTATED  
DECLARATION OF PRAIRIE BROOK HOMEOWNERS ASSOCIATION**

THIS AMENDED AND RESTATED DECLARATION is made as of the 30<sup>th</sup> day of August, 2018, by the undersigned members of Prairie Brook Homeowners Association, Inc.

**RECITALS:**

A. Hidden Creek, L.L.C., a Kansas limited liability company ("Developer") recorded a DECLARATION OF PRAIRIE BROOK (the "Original Declaration") as of May 1, 2005, on December 25, 2005 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 200512 at Page 008559 concerning the following real property:

Lots 1-62 inclusive and Tracts A-E inclusive of Hidden Creek First Plat, a subdivision in the City of Olathe, Kansas filed for record on June 20<sup>th</sup>, 2005 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 200506 at Page 008935, and Lots 63 and 64 of Hidden Creek Second Plat, a subdivision in the City of Olathe, Kansas filed for record on September 12<sup>th</sup>, 2005 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 200509 at Page 003897.

B. Developer created a community association, the members of which shall be the owners of individual lots within the Neighborhood, for the purposes of maintaining the appearance and quality of certain common facilities and amenities serving the entire Neighborhood, providing certain services to the lot owners and for the other purposes herein set forth.

C. Developer established easements, covenants, conditions, restrictions and obligations upon the Neighborhood, all for the purpose of enhancing and preserving the value, desirability and attractiveness of the Neighborhood.

Developer declared that all property within the Neighborhood shall be held, transferred, sold, conveyed, mortgaged, leased, occupied and used subject to the covenants, conditions, restrictions, assessments, liens, easements, privileges, rights and other provisions hereinafter set

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forth, all of which shall run with the land and be binding upon all property within the Neighborhood and all parties having or acquiring any right, title or interest in or to any property within the Neighborhood, and shall inure to the benefit of and be a burden upon each owner of land within the Neighborhood.

D. Hidden Creek First Plat was re-platted as Lots 4-62 inclusive and Tracts A-F of Prairie Brook, First Plat, a subdivision in the City of Olathe, Kansas, filed for record on February 17, 2006 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 200602 at Page 005270. Lots 63 and 64 of Hidden Creek Second Plat have been re-platted as Lots 63 and 64 of Prairie Brook, Second Plat, a subdivision in the City of Olathe, Kansas filed for record on February 17, 2006 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 200602 at Page 005271 (the foregoing is hereafter described as the "Neighborhood").

E. That certain Supplemental Declaration dated July 18, 2008 ("Supplemental Declaration") of Prairie Brook was recorded in the office of the Register of Deeds of Johnson County, Kansas, as recorded on July 22, 2008, in Book 200807 at Page 005975, whereby the property known as the Prairie Brook Villas was added to the Neighborhood and became subject to the Declaration.

F. That Second Supplemental Declaration dated August 12, 2008 ("Second Supplemental Declaration") of Prairie Brook was recorded in the office of the Register of Deeds of Johnson County, Kansas, on August 15, 2008 in Book 200808 at Page 003828, whereby PRAIRIE BROOK THIRD PLAT and PRAIRIE BROOK FOURTH PLAT were added to the Neighborhood and became subject to the Declaration.

The Final Plat of PRAIRIE BROOK THIRD PLAT was recorded March 23, 2007, in Book 200703 at Page 007526; and

The Final Plat of PRAIRIE BROOK FOURTH PLAT was recorded March 23, 2007, in Book 200703 at Page 007527.

G. Lots 125, 126, 127, 128, 129, 136, and 137 in PRAIRIE BROOK FOURTH PLAT are subject to a "Tree Preservation Easement" or TP/E that provides in the recorded plat as follows:

An easement is hereby dedicated to the City of Olathe to enter upon, over and across those areas outlined and designated on this plat as "Tree Preservation Easement" or TP/E. Trees shall not be removed from a tree preservation easement without the City of Olathe's permission, unless such trees are dead, diseased or pose a threat to the public or adjacent property. The Homes Association, or their designees, shall be responsible for the maintenance of the tree preservation easement, including but not limited to, the removal of dead, diseased trees or trees posing a threat to the public or adjacent property.

H. The Developer, on behalf of the Association, designated the Owners of the Lots affected by the Tree Preservation Easement as the "designees" for the purposes of being responsible for the maintenance of the Tree Preservation Easement, including but not limited to, the removal of dead, diseased trees posing a threat to the public or adjacent Lots, with respect to the individual Lots owned by an Owner, pursuant to a Third Supplemental Declaration dated December 15, 2008 ("Third Supplemental Declaration") of Prairie Brook as recorded in the office of the Register of Deeds of Johnson County, Kansas, on December 18, 2008, in Book 200812 at Page 003892.

I. A portion of the property which is part of The Final Plat of PRAIRIE BROOK FOURTH PLAT and subject to the Second Supplemental Declaration was re-platted as follows:

The Final Plat of PRAIRIE BROOK FIFTH PLAT, A REPLAT OF LOTS 137, 138 AND PART OF TRACT "T", PRAIRIE BROOK, FOURTH PLAT (A SUBDIVISION OF THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS), as recorded February 19, 2009, in Book 200902, at Page 006549 as Document No. T20090005722, in the office of the Register of Deeds of Johnson County, Kansas.

J. The Developer also previously executed that certain Fourth Supplemental Declaration dated March 26, 2010 ("Fourth Supplemental Declaration") of Prairie Brook as recorded in the office of the Register of Deeds of Johnson County, Kansas, on April 2, 2010, in Book 201004 at Page 000578, Document No. T20100012444, whereby property was added to the Neighborhood and became subject to the Declaration, and certain other Owners adopted the Declaration and were added to the Neighborhood and became subject to the Declaration, which such property was legally described as:

Lot 96, Lots 149-170, inclusive and Tracts N and O of the FINAL PLAT OF PRAIRIE BROOK SIXTH PLAT ( A REPLAT OF LOT 96 AND PART OF 109TH STREET RIGHT-OF-WAY, PRAIRIE BROOK THIRD PLAT AND A PART OF THE SW ¼ OF SEC. 9-13-23, IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS, as recorded December 2, 2009, in Book 200912 at Page 000951.

K. A portion of the Neighborhood was re-platted as:

FINAL PLAT OF PRAIRIE BROOK VILLAS, SECOND PLAT, (A REPLAT OF LOTS 13 THROUGH 16 AND TRACT B, PRAIRIE BROOK VILLAS, FIRST PLAT IN THE SW ¼ OF SEC. 19-13-23, IN THE CITY OF OLATHE. JOHNSON COUNTY, KANSAS) as recorded September 15, 2010, in Book 201009, at Page 005772 as Document No. T20100042812, in the office of the Register of deeds of Johnson County, Kansas.

L. The Developer also previously executed that certain Fifth Supplemental Declaration dated September 17, 2010 ("Fifth Supplemental Declaration") of Prairie Brook as recorded in the office of the Register of Deeds of Johnson County, Kansas on September 21, 2010, in Book 201009 at Page 008181, Document T20100044140, whereby property was added to the Neighborhood and became subject to the Declaration, and certain other Owners adopted the Declaration and were added to the Neighborhood and became subject to the Declaration, which such property was legally described as:

The FINAL PLAT OF PRAIRIE BROOK, SEVENTH PLAT (A REPLAT OF PART OF TRACT "O", AND PART OF BELMONT ST. RIGHT-OF-WAY, PRAIRIE BROOK, SIXTH PLAT, A REPLAT OF LOTS 9, 10, 11, PART OF TRACT "A", AND PART OF WRANGLER ST. RIGHT-OF-WAY, PRAIRIE BOOK VILLAS, FIRST PLAT, AND A PLAT OF PARTS OF THE SW ¼ OF SEC 9-13-23, AND THE SE ¼ OF SEC. 8-13-23, IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS), as recorded September 15, 2010, in Book 201009, at Page 005790 as Document No. T20100042823, in the office of the Register of Deeds of Johnson County, Kansas.

M. The Developer also previously executed that certain Sixth Supplemental Declaration dated March 29, 2013 ("Sixth Supplemental Declaration") of Prairie Brook as recorded in the office of the Register of Deeds of Johnson County, on April 4, 2013 in Book 201304 at Page 002247 as Document T20130025260, whereby property was added to the Neighborhood and became subject to the Declaration, and certain Owners adopted the Declaration and were added to the Neighborhood and became subject to the Declaration, which such property was legally described as:

Lots 30-40 inclusive and Tracts A-C inclusive of the FINAL PLAT OF PRAIRIE BROOK VILLAS, THIRD PLAT (PART OF THE SOUTHWEST ONE-QUARTER OF SECTION 9 AND PART OF THE S.E. ¼ OF SECTION 8, TOWNSHIP 13 SOUTH, RANGE 23 EAST, IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS), AS RECORDED March 13, 2013 in Book 201303, at Page 005097 as Document No. T20130019263 in the office of the Register of Deeds of Johnson County, Kansas.

N. The developer also previously executed that certain STORMWATER TREATMENT FACILITIES MAINTENANCE DECLARATION DATED April 5, 2013 ("Stormwater Treatment Facilities Maintenance Declaration") as recorded in the office of the Register of Deeds of Johnson County, Kansas, on April 8, 2013, in Book 201304 at Page 003009 as Document T20130025910, whereby mutually beneficial restrictions set forth therein are imposed on Tract A, PRAIRIE BROOK VILLAS THIRD PLAT IN THE City of Olathe, Johnson County, Kansas and are subject to the Declaration of Prairie Brook.

WHEREAS, Section 7 of Article 1 of the By-Laws of the Prairie Brook Homeowners Association, Inc. (the "Association") provides that Developer could file and execute a Certificate of Substantial Completion stating that substantially all the Lots in the Neighborhood have been sold by the Developer and the residences constructed thereon are substantially complete; and

WHEREAS, Section 2.7 of the Association Declaration provides that the Developer has absolute control of the Association until the Turnover Date; and

WHEREAS, the "Turnover Date" as defined in Section 2.7 of the Association Declaration occurred August 19, 2015; and

WHEREAS, pursuant to Article 13, Section 13.1 of the Declaration, the Declaration may be amended at any time by the affirmative vote of Members representing two-thirds of all Members of the Association entitled to vote at a meeting of the Members; and

WHEREAS, a majority of the Board of Directors has proposed to amend and restate the Declaration in order to incorporate revisions to the state laws governing homeowners associations, to update the community governance, and to establish a flexible and reasonable procedure to govern owners, among other things; and

WHEREAS, notice of a special meeting of the Association for the purpose of considering this Amended and Restated Declaration was given to each Member on January 31, 2018; and

WHEREAS, a special meeting of the Association was held on February 15, 2018 for the purpose of considering this Amended and Restated Declaration; and

WHEREAS, two-thirds of the total Members in the Association voted to amend the Declaration by adopting the Amended and Restated Declaration for Prairie Brook ("Amended and Restated Declaration") as attached hereto;

NOW, THEREFORE, the Declaration is hereby amended by striking it and all amendments and exhibits thereto in their entirety and substituting in its place the Amended and Restated Declaration attached hereto.

IN WITNESS WHEREOF, the undersigned officers of the Prairie Brook Homeowners Association hereby certify that this Amendment has received the requisite approval pursuant to Section 13.1 of the Declaration this 30<sup>th</sup> day of August, 2018.

**ARTICLE 1**  
**DEFINITIONS**

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

- 1.1     **"Assessable Lot"** means each lot owned by a person or persons or entity or entities.
- 1.2     **"Assessment"** shall mean any annual assessment, special assessment, maintenance assessment or installment thereof, which is levied on Lots by the Association in accordance herewith.
- 1.3     **"Association"** means the Prairie Brook Homeowners Association, Inc., a Kansas not-for-profit corporation organized as herein provided.
- 1.4     **"Board"** shall mean the Board of Directors of the Prairie Brook Homeowners Association.
- 1.5     **"City"** means the City of Olathe, Kansas.
- 1.6     **"Common Facilities"** means all land designated for the general use, benefit or enjoyment of all owners, tenants and occupants of the Neighborhood which is: (a) designated as a tract on any plat of any portion of the Neighborhood; (b) deeded to the Association; or (c) the subject of easements, leases, licenses or other rights of use granted to the Association, together with all improvements, fixtures, equipment and other tangible personal property located on, used in connection with or forming a part of any of the foregoing land, including, without limitation: buildings and structures; plantings, irrigation systems and other landscape features; playgrounds, picnic areas, parking areas, swimming pools and other recreational facilities and equipment; sidewalks, trails and walkways, lighting, signs, monuments, walls, fences and sculptures; common mailboxes and appurtenant facilities, and streams and drainage facilities; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Facility so enumerated will exist within the Neighborhood.
- 1.7     **"Declaration"** means this Declaration of Prairie Brook, as it may be amended or supplemented from time to time.
- 1.8     **"Lot"** means each separate parcel within the Neighborhood, as shown on any recorded plat of all or part of the Neighborhood, which is intended for individual ownership, except any such separate parcel included within the Common Facilities, provided however, that if an owner owns all or parts of one or more adjacent Lots upon which only one residence has been, is being, or will be constructed, then such adjacent property under common ownership shall be deemed to constitute only one "Lot."

1.9 **"Owner"** means each person or persons and/or entity or entities who may from time to time own fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

1.10 **"Plat"** means, collectively, all subdivision plats of land within the Neighborhood, as approved by the City and recorded with the Register of Deeds, as the same may be amended from time to time.

1.11 **"Pool Area"** means the specific portion of the Common Facilities designated as a swimming pool facility, together with all improvements, fixtures, equipment and other tangible personal property located on, used in connection with or forming a part of said facility, including, without limitation, swimming or wadding pools, surrounding decks and fencing, buildings containing restrooms, storage facilities and mechanical equipment, and related shelters, walkways, parking areas, landscaping, irrigation systems, lighting, plumbing and utilities.

1.12 **"Register of Deeds"** means the Register of Deeds of Johnson County, Kansas.

1.13 **"Residence"** means a building (together with related improvements) which is designated and used exclusively for single-family residential purpose located on any Lot in the Neighborhood.

1.14 **"Sign"** means any mark, symbol, word or drawing intended to communicate to a viewer.

## **ARTICLE 2** **ASSOCIATION**

2.1 **Purpose of Association.** The Association shall protect, maintain, improve, operate and administer the Neighborhood (including the Common Facilities), including taking necessary action to levy and collect the Assessments herein provided for, paying expenses and losses and doing such other things as are provided or contemplated in this Declaration and the Association's Articles of Incorporation and Bylaws. The Association shall not be deemed to be conducting a business of any kind and shall hold and apply all funds it receives for the benefit of the Neighborhood in accordance with the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws.

### **2.2 Membership in Association.**

2.2.1 Each Owner shall, upon acquisition of fee simple title to any Lot, automatically become a member of the Association. Each Owner shall be entitled to one (1) Association membership and shall have one (1) vote in the Association for each Lot in which the Owner holds the interest required for membership and upon which the member shall not be delinquent in the payment of Assessments. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner. If an Owner is comprised of more than one person and/or entity, they shall designate one of their number to hold the Association membership, and

each member must be: (1) an individual who is an Owner; or (2) if the Owner is or includes a partnership, an individual who is a partner; or (3) if the Owner is or includes a corporation, an officer of the corporation; or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust; or (5) if the Owner is or includes a limited liability company or an association, an individual who is a member or manager of the limited liability company or association.

2.2.2 A membership in the Association shall not be transferred, pledged or alienated in any way by any Owner except as expressly provided in this Declaration. Subject to the provisions of this Section 2.2, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains, whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Lot; however, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

2.2.3 Notwithstanding the foregoing provisions of Section 2.2, if an Owner has granted an irrevocable proxy or otherwise pledged the voting rights appurtenant to such Owner's membership in the Association to a mortgagee as additional security, the votes of such mortgagee shall be recognized if a copy of the proxy or other instrument pledging such voting right has been provided. The Association shall recognize the rights of the mortgagee under the instrument first provided.

### **2.3 Indemnification.**

2.3.1 To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association and each member of the Design Review Committee (hereinafter defined) (each, an "Indemnified Party") against all expenses and liabilities (including attorneys' fees) reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity, provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

2.3.2 To the fullest extent permitted by law, neither any officer or director of the Association nor any member of the Design Review Committee shall be liable to any Owner or any Association member or anyone claiming by, through or under any Owner or Association member for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, inaction, omission, error or negligence taken or made in good faith and which such officer, director or Design Review Committee member reasonably believed to be within the scope of his, her or its duties.



**2.4 Powers and Duties of the Association.** The Association shall have the powers and duties set forth in its Articles of Incorporation and Bylaws, provided such powers and duties are not inconsistent with the provisions of this Declaration. In addition to and not in limitation of the powers and duties of the Association provided in its Articles of Incorporation and Bylaws, the Association shall have the following powers and duties:

**2.4.1 Discretionary Powers.** The Association shall have and does hereby reserve the right, power and authority, in its discretion, to do any of the following, which it may exercise or perform whenever, in its discretion, it may deem necessary or desirable:

(a) Acquire and own title to or acquire by lease such real property as may be reasonably necessary in order to carry out the purposes of the Association.

(b) Provide for the design, construction, installation, maintenance, replacement, protection and operation of any improvements the Association may deem advisable on any Common Facilities which are intended for the use, benefit or enjoyment of Owners in the Neighborhood.

(c) Install, maintain and use, or authorize the installation, maintenance and use of sanitary and storm sewers, storm drains, gas and water pipelines, underground electric, cable television and telephone conduits and related appurtenances, and grant permits, licenses, or right-of-ways for such public and private utilities, roadways or other purposes over, under, upon and through all easements and rights-of-way shown on any recorded plat of the Neighborhood or any Common Facilities as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Neighborhood or any part thereof or the preservation of the health, safety, convenience and welfare of the Owners. All utility easements and rights-of-way shall inure to the benefit of all utility companies, including, without limitation, the City of Olathe Sewer District, for purposes of installing, maintaining or moving any utility lines or services, and shall inure to the benefit of all Owners and the Association as a cross easement for utility line or service maintenance.

(d) Clean streets, gutters, catch basins, sidewalks, storm sewers, irrigation and drainage facilities, including, without limitation, any such facilities or improvements located within public right-of-ways which serve the Neighborhood.

(e) Erect and maintain Signs for purposes of identification, traffic control and public safety.

(f) Employ duly qualified security officers to provide protection for the Neighborhood or any part thereof.

(g) Obtain and maintain property insurance on the Common Facilities against loss or damage by fire, hazard or other casualty; comprehensive liability insurance with respect to the Common Facilities covering all claims for personal injury and/or property damage; and/or adequate fidelity coverage to protect against dishonest acts by officers, directors and employees of the Association and all others who handle or are responsible for handling funds of the Association, all in such forms and amounts and with such insurance companies as the Association may deem appropriate, naming as insureds the Association, each director of the Association, any management company under any management contract with respect to the Common Facilities and its agents and employees, and any other persons or entities designated by the Association in its discretion.

(h) Borrow money in such amounts, at such rates of interest, upon such terms and security and for such periods of time as the Association may deem necessary or appropriate, in its sole discretion.

(i) Establish reserve accounts for repair and maintenance of Association property, periodically review the adequacy thereof, and maintain such reserve funds in interest-bearing accounts until expended for the benefit of the Association.

(j) Adopt and enforce reasonable rules and regulations, including establishing and collecting monetary fines as a special Assessment against an Owner and Lot in such amounts as the Board deems necessary to effect compliance with the requirements of Rules, Regulations and this Declaration, which shall govern the use of the Common Facilities and Lots; preserve or enhance the quality or appearance of the Neighborhood, or the safety, convenience, benefit and enjoyment of the users thereof; or otherwise promote the interests of Owners, tenants and occupants of land within the Neighborhood; and revoke, amend or supplement such rules, regulations and restrictions at any time and from time to time.

(k) Obtain an injunction to prevent the breach of, or to enforce the observance of, and/or sue for damages as a result of the violation of, either in its own name or in the name of any Owner, any and all terms, provisions, covenants, conditions, restrictions, licenses and easements imposed upon the land in the Neighborhood by this Declaration, provided that failure to do so at the time of violation shall in no event be deemed to be a waiver of the right to do so thereafter. To the extent permitted by law, the party against whom such enforcement or damages are sought shall pay all costs and expenses (including reasonable attorneys' fees) of the Association with respect to any such action or proceeding, and the Lot owned by such Owner may be subject to a lien for payment. Any such

costs and expenses not paid by such party shall be paid out of the general fund of the Association herein provided for. Nothing herein shall be deemed to prevent any Owner having the right to do so from enforcing, in such Owner's own name, any of the terms, provisions, covenants, conditions, restrictions and easements established by this Declaration, nor shall any Owner have any liability for the failure to do so.

(l) If any vacant or unimproved Lot is not maintained by the Owner thereof, mow, care for, maintain and remove loose material, trash and rubbish from such Lot and do anything else the Association deems necessary or desirable to keep such Lot neat in appearance and in good order.

(m) Exercise any other powers elsewhere provided to the Association in this Declaration.

2.4.2 Duties. The Association shall have the duty to do or cause to be done the following:

(a) Levy and collect the assessments and charges provided for in this Declaration.

(b) Care for, trim, protect, remove and replant trees, shrubbery, flowers, and ground covers and grass which are part of the Common Facilities, and install and maintain sprinkler systems on portions of the Common Facilities where irrigation is deemed necessary by the Association.

(c) Provide for the collection and disposal of trash and garbage, if such service is not available from public sources.

(d) Exclusively manage, control, maintain, repair and replace all Common Facilities for the benefit of the Owners, including exercise of control over such easements, leases, licenses, usage rights and other rights and property as the Association may acquire from time to time.

(e) Pay all taxes and assessments levied or assessed against the Common Facilities and any other property owned or leased by the Association.

(f) Keep true and correct records of account in accordance with generally accepted accounting principles, and have available for inspection by any Owner, at reasonable times during regular business hours, books which specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

(g) Upon reasonable request and during reasonable business hours, make available for inspection by any Owner or Association member of the books, records and financial statements of the Association, together with current copies, as

amended from time to time, of this Declaration, the Articles of Incorporation and Bylaws of the Association and the Design Standards (hereinafter defined).

(h) Perform any other duties required of the Association as provided elsewhere In this Declaration.

**2.5 Managing Agent; Contracts and Services.** Any powers, rights and duties of the Association may be delegated to a managing agent under a management contract; provided that no such delegation shall relieve the Association from its obligations to perform any such delegated duty. Any contract entered into by the Association for professional management or other services shall not exceed a term of three (3) years, which term may be renewed by agreement of the parties for successive one-year periods, and any such contract shall permit termination by either party upon thirty (30) days' notice with or without cause and without payment of any termination fee. The Association shall also have the right, in its discretion, to enter into such contracts and transactions with others as the Association may deem necessary or desirable for the purposes herein set forth, and shall have the right to engage and dismiss such agents and employees as will enable the Association to adequately and properly carry out the provisions of this Declaration and the Association's Articles of Incorporation and Bylaws.

### **ARTICLE 3** **ASSESSMENTS**

**3.1 Creation of Lien and Personal Obligation.** Each Owner of an Assessable Lot, by acceptance of the deed or other conveyance thereof or interest therein, is deemed to covenant and agree to pay all Assessments provided for in this Declaration. Each Assessment, together with interest thereon as hereinafter provided, filing fees, attorneys' fees, court costs and other costs of collection thereof (such interest and all of such fees and costs being herein sometimes collectively called "Costs") shall be a continuing lien upon the Assessable Lot against which such Assessment is made, which lien shall be enforceable as provided in Section 3.9. Each Assessment, together with Costs relating thereto, shall also be the personal obligation of the Owner of the Assessable Lot against which the Assessment is made. Such personal obligation shall not pass to an Owner's successor unless expressly assumed by the successor. If an Owner consists of more than one person and/or entity, the obligations of the Owner for the payment of such Assessments and Costs shall be joint and several.

**3.2 Purpose of Assessments.** The Assessments levied by the Association shall be used to provide funds to enable the Association to exercise the powers and perform the duties herein set forth, including (by way of example only and not by way of limitation):

(a) The costs of construction, installation, maintenance, management, operation, repair and replacement of the Common Facilities;

(b) The costs of management and administration of the Association, such as compensation paid by the Association to managers, accountants, attorneys, other professionals and employees;

(c) The costs of utilities (including water, electricity, gas, sewer and trash removal services provided directly to the Association and not individually metered or billed by the service providers directly to the Lots), and other services provided by the Association which generally benefit and enhance the value and desirability of the Neighborhood;

(d) The costs of any insurance maintained by the Association;

(e) Reasonable reserves for major items, contingencies, replacements and other proper purposes as deemed appropriate by the Association;

(f) The costs of bonding any persons handling funds of the Association;

(g) Taxes, assessments and other governmental impositions paid by the Association; and

(h) The costs of any other items or services to be provided or performed by the Association as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws, or in furtherance of the purposes of the Association.

**3.3 Method of Allocation.** The Board of Directors shall propose and adopt a budget for the Association at least annually. Notice of any meeting at which a budget will be considered shall be given to Owners at least ten (10) days prior to the meeting date and, in accordance with applicable Kansas law (KSA 58-4620 at the time of approval of this amended Declaration), a copy of the proposal shall be available to any Owner who requests it. At any meeting at which the budget or a budget amendment is considered, Owners shall be given a reasonable opportunity to comment on the proposal prior to the Board taking action. The total amount of each annual Assessment and each special Assessment levied by the Association shall be divided equally among all of the Assessable Lots included within the Neighborhood at the time such Assessment is levied. Each Assessable Lot shall be subject to assessment in accordance with the method provided above, regardless of whether any two or more Assessable Lots have been combined into a single Lot.

### **3.4 Annual Assessments.**

3.4.1 Each Assessable Lot shall be subject to an annual Assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the Owner of such Assessable Lot. If the amount collected from annual Assessments for any year exceeds the Association's costs and expenses for such year, such excess shall be taken into consideration in preparing the budget and determining the annual Assessment to be levied for the following year. If the amount collected from annual Assessments for any year is inadequate to meet the Association's actual or projected costs and expenses for such year, special Assessments may be levied at any one or more times during such year as provided in this Article. A portion of the annual Assessments for each year may be allocated to reserves to provide required funds for repair or replacement of major items and for other contingencies and proper purposes. The responsibility of the Association shall be only to provide for such reserves as the Association in good faith

deems reasonable, and the Association shall not have any liability to any Owner or member of the Association if such reserves are inadequate.

3.4.2 The annual Assessment for each Assessable Lot for each year shall be determined by the Board. Notwithstanding anything herein to the contrary, the annual Assessment upon each Lot shall not be increased by action of the Board by an amount exceeding twenty percent (20%) of the preceding year's annual Assessment, unless such increase is authorized by fifty percent (50%) of the votes of Owners in the Neighborhood.

3.4.3 The Annual Assessment with respect to each Assessable Lot shall be due as of January first of such year.

3.4.4 Failure of the Association to levy an annual Assessment prior to January first of any year shall not invalidate any such Assessment subsequently levied for that particular year, nor shall failure of the Association to levy an annual Assessment for any one year in any way affect the right of the Association to do so for any subsequent year.

**3.5 Special Assessments.** The Association may at any time or times during any year, it necessary in its discretion to enable the Association to carry out the purposes herein set forth, levy against any, or each and every Assessable Lot a special Assessment over and above the annual Assessment for such year authorized by Section 3.4. Special Assessments may be levied by the Association only if fifty percent (50%) of the votes cast by Owners shall be in favor of such special Assessments.

**3.6 Notice.** The Association shall give at least thirty (30) days advance notice to each Owner of an Assessable Lot whose address is then listed with the Association of the amount of any Assessment for such Assessable Lot and the date on which such Assessment is due.

**3.7 No Waiver of Offset.** No Owner of an Assessable Lot shall be exempt from payment of the Assessments and Costs imposed under this Declaration by waiver of the use or enjoyment of the Common Facilities or right-of-way amenities or by non-use thereof or by abandonment of such Owner's Assessable Lot. All Assessments shall be payable in the amounts specified in the notices thereof given by the Association, and there shall be no offsets against such amounts for any reason.

**3.8 Delinquency; Enforcement of Liens.**

3.8.1 If any Owner of an Assessable Lot fails to pay any Assessment on or before the 30<sup>th</sup> day following the date on which such Assessment is due, then such Assessment shall bear interest from the due date until paid at the highest rate allowable under Kansas law.

3.8.2 Each Assessment shall become delinquent on the 30<sup>th</sup> day after the date on which such Assessment is due, and payment of the Assessment and Costs (including interest) may then be enforced as a lien on such Assessable Lot in proceedings in any court in Johnson County, Kansas having jurisdiction of suits for the enforcement of such liens.

The Association may, whenever any Assessment is delinquent, file a certificate of nonpayment of Assessments with the Register of Deeds, and for each certificate so filed, the Association shall be entitled to collect from the Owner of the Lot described therein a reasonable fee plus the costs of recording such certificate, which fee shall be part of the Costs included in the lien.

3.8.3 Such liens shall continue for the maximum amount allowed by law, and no longer, unless, within such time, suit shall have been instituted for the collection of the Assessment, in which case the lien shall continue until the termination of the suit or until the sale of the Lot under execution of the judgment therein.

3.8.4 Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, the benefit of any redemption, homestead or exemption laws of the State of Kansas now or hereafter In effect.

3.8.5 Any lien which arises against any Assessable Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded first mortgage on such Assessable Lot acquired in good faith and for value securing the payment of a loan made by a bank, savings and loan association, or other institutional lender ("First Mortgage"), except for any unpaid Assessments and Costs which accrue from and after the date on which the holder of such First Mortgage ("First Mortgagee") (a) comes into possession of the Assessable Lot or, (b) acquires title to the Assessable Lot, whichever occurs first. If any lien for any unpaid Assessments and Costs which accrued prior to the date a First Mortgagee comes into possession of or acquires title to the Assessable Lot has not been extinguished by the process whereby the First Mortgagee came into possession or acquired title, the First Mortgagee shall not be liable for such unpaid Assessments or Costs arising or accruing prior to such date and, upon request by the First Mortgagee to the Association, the Association shall release such lien of record; provided, however, that: (a) any unpaid Assessments and Costs which are so extinguished shall continue to be the personal obligation of the delinquent Owner, and the Association may seek to collect them from such Owner even after such Owner is no longer the Owner of the Lot or a member of the Association; and (b) if the Owner against whom the original Assessment was made is the purchaser of or redeems the Assessable Lot, the lien shall continue in effect and may be enforced for the Assessments and Costs which were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Any such unpaid Assessments and Costs which are not collected within a reasonable time may be reallocated by the Association among all other Owners of Assessable Lots, irrespective of whether collection proceedings have been commenced or are then pending against the defaulting Owner.

3.9 **Certificate of Nonpayment.** Upon request, any party acquiring title to or any interest in an Assessable Lot shall be entitled to a certificate from the Association setting forth the amount due for unpaid Assessments and Costs pertaining to such Assessable Lots, if any, and such party shall not be liable for, nor shall any lien attach to the Assessable Lot in excess of, the amount set forth in the certificate, except for Assessments and Costs which arise or accrue after the date of the certificate.

**3.10 Pledge of Assessment Rights as Security.** The Association may pledge the right to exercise its assessment powers as security for any obligation of the Association; provided, however, any such pledge shall require the prior affirmative vote of a majority of all members of the Association.

#### **ARTICLE 4** **EASEMENTS AND LICENSES**

**4.1 Reservation by Association; Grant to Association.**

4.1.1 The Association hereby reserves to itself the right, privilege and easement to enter upon the Common Facilities and Lots to the extent necessary for the purposes of:

(a) Constructing, maintaining, relocating, repairing and replacing improvements on the Common Facilities the Association reasonably believes will enhance the beauty and function of the Common Facilities or the Neighborhood;

(b) Planting, replanting, maintaining and replacing grass and landscaping on the Common Facilities; and

(c) Doing all other things the Association shall be obligated to do as set forth in this Declaration or shall deem desirable for the neat and attractive appearance and beautification of the Common Facilities and right-of-way amenities.

4.1.2 The foregoing rights, privileges and easements of the Association shall be perpetual and shall survive termination of this Declaration. The rights granted to the Association herein shall not be affected or impaired by the Association's failure to be formed as of the date of the filing of this Declaration, but said rights shall pass upon the date of such formation.

**4.2 Use of Common Facilities; Grant to Owners.** The Association hereby grants to each Owner the non-exclusive, perpetual right, privilege and easement to use and enjoy the Common Facilities for the respective purposes for which the Common Facilities are constructed, designed and intended, subject to all of the provisions of this Declaration, the provisions of the Association's Articles of Incorporation and Bylaws, any reasonable rules and regulations of general application within the Neighborhood which the Association may adopt from time to time, and the rights of any governmental authority or utility therein or thereto, which right, privilege and easement shall be appurtenant to and shall automatically pass with the title to each Lot and shall survive the termination of this Declaration.

**4.3 License to Enter.** During the term of this Declaration and thereafter, as long as any of the easements created by this Declaration survive, the Association and its respective members, partners, officers, employees, agents and contractors shall have a temporary license to enter upon and use such portions of any Lot as may be reasonably necessary to permit the



Association to exercise or perform all or any of the rights, powers and obligations reserved, given to or imposed upon the Association by the provisions of this Declaration.

**4.4 Performance of Work; Indemnification.** The Association, in entering upon any Lot in the exercise of the rights, privileges and easements granted to it by this Article 4, shall:

- (a) Perform all work with due diligence;
- (b) Take all safety measures reasonably required to protect persons and property;
- (c) Perform the work so as to avoid, to the extent practical, interference with the use or quiet enjoyment of the Lot;
- (d) After the work is completed, restore the Lot to the condition existing prior to the work (to the extent consistent with the performance of such work); and
- (e) Indemnify and hold harmless the Owner of the Lot from and against all claims for bodily injury or property damage which may be asserted against such Owner by reason of the exercise of rights by the Association under this Article 4.

## **ARTICLE 5**

### **OWNERS' INSURANCE; DAMAGE TO IMPROVEMENTS**

**5.1 Owners' Insurance.** Each Owner shall obtain and maintain property insurance insuring all improvements on such Owner's Lot against loss by fire and such other perils as are covered by a standard fire insurance policy with a so-called "extended coverage" endorsement and such personal liability and other insurance as such Owner desires, the premiums for which shall be paid by such Owner.

**5.2 Damage to Improvements.** If improvements on a Lot are damaged or destroyed by casualty or other cause, such improvements shall be repaired and restored with due diligence and any insurance proceeds shall be applied to restoration or repair; provided, however, that the Owner may elect not to restore or repair if:

- (a) The improvements are subject to a First Mortgage and the First Mortgage requires, because restoration or repair is not economically feasible or because the security of the First Mortgage is threatened, that insurance proceeds be applied to sums secured by the First Mortgage; or,
- (b) The Association consents to Owner's election not to restore or repair. Should an Owner elect not to restore or repair as permitted by the preceding sentence, the Owner shall, at its sole expense, demolish the damaged improvements (including foundations), clear away all debris and take all other action (including filling to grade, sodding and landscaping) required so that the area formerly occupied by the demolished improvements

shall be neat and attractive in appearance and compatible with a high quality residential development.

## **ARTICLE 6**

### **ADDITIONAL COVERAGE**

**6.1 Maintenance by Owners.** Except as otherwise expressly provided in this Declaration, each Owner, at such Owner's expense, shall provide and be responsible for all maintenance, repairs, replacements and approved construction on such Owner's Lot.

**6.2 Taxes and Other Encumbrances.** Each Owner shall promptly pay, before delinquency, all taxes, assessments, liens, encumbrances or charges of every kind levied against or imposed upon such Owner or such Owner's Lot which may, as a matter of law, be or become a lien on any part of the Common Facilities, which lien is prior to the easements granted and reserved in this Declaration. In the event of a breach of this covenant, the Association shall have, in addition to all other rights or remedies, the right (but not the obligation) to obtain the discharge of any such lien by payment or otherwise, and collect from such Owner all Costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

## **ARTICLE 7**

### **DESIGN CONTROL**

**7.1 Design Review Committee.** The Association shall have a Design Review Committee consisting of an odd number of Owners, not less than three, appointed (and removed) from time to time by the Board

**7.2 Meetings.** The Design Review Committee shall meet as necessary to consider applications with respect to any matters that require the approval of the Design Review Committee and any other matters within the authority of the Design Review Committee as provided in this Declaration. A majority of the members of the Design Review Committee shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Design Review Committee.

**7.3 Approval of Improvements, Alterations and Replacements.**

7.3.1 No building or other structure; fence or wall; driveway, walkway, patio or deck; exterior lighting, sign, apparatus or fixture; swimming pool or other recreational facility or equipment; landscaping or alteration of grade or drainage; or changes, alterations or additions to the exterior portions of any of the foregoing (including color changes), either temporary or permanent (collectively referred to as "Improvements"), shall be constructed, erected, installed, placed, undertaken or maintained in or upon any part of the Neighborhood except in compliance with plans and specification thereof which have been submitted to and received prior approval in writing from the Design Review Committee.

7.3.2 Replacements of any exterior portions of any Improvements because of age, deterioration, casualty loss or other reason shall be of the same design, material and color as the original Improvement unless plans and specifications thereof have been submitted to and received prior approval in writing from the Design Review Committee.

**7.4 Design Standards.** In order to achieve uniformity and coordination within the Neighborhood and carry out the purposes of the Design Review Committee, design standards ("Design Standards") shall be proposed by the Design Review Committee and approved by the Board. The Design Standards may, from time to time, be amended, supplemented or repealed by the Board.

**7.5 Design Considerations.** In connection with the approval or disapproval of plans and specifications, the Design Review Committee shall consider appearance; quality of design and workmanship; harmony of design, materials and colors in relation to surrounding structures and landscape and the Neighborhood as a whole; and location and finished grade elevations with respect to surrounding topography. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others:

- (a) Insufficient information to adequately evaluate the design or its intent;
- (b) Poor overall design quality;
- (c) Incompatible design elements;
- (d) Inappropriate design concept or design treatment; or
- (e) A design or intended use found to have an adverse effect on the character of the Neighborhood or its residents. In recognition of the fact that the overall impact of Improvements involves issues of taste and judgment which cannot be completely reduced to Design Standards, the Design Review Committee shall also have the right, in its sole discretion, to reject plans and specifications conforming to the Design Standards if the Design Review Committee believes that the overall aesthetic impact of any proposed Improvement, addition, alteration or change is detrimental to the Neighborhood.

**7.6 Review Process.** All submissions to the Design Review Committee are to be made within the time periods to be established from time to time by the Design Review Committee. The Initial review of each such submission by the Design Review Committee will be carried out within thirty (30) working days from the date of each submission, and notification of recommendations, approval or disapproval will be provided in writing to the Owner within that time. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the Design Review Committee.

**7.7 Appeal to the Board.** Any applicant or other person who is dissatisfied with a decision of the Design Review Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven (7) days after the date the Design Review Committee renders its written decision. In making its decisions, the

Board may consider any and all aspects and factors that the individual members of the Board, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Neighborhood, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed exterior structure. Any decision rendered by the Board on appeal of a decision of the Design Review Committee shall be final and conclusively binding on all parties and shall be deemed to be the decision of the Design Review Committee for all purposes under this Declaration. Rules and regulations respecting appeals of decisions of the Design Review Committee, including, without limitation, requiring payment of a reasonable fee by the appealing party, may be amended from time to time, in accordance with Article 11 of this Declaration.

**7.8 Plans and Specifications.** Building plans and specifications shall include the following:

(a) A site plan which shows the location of the Residence on the Lot; the location of driveways, walkways, patios, decks, walls, fences, and other structures; the top of foundation elevations; the existing grades and the proposed final grading of the Lot; and the size and location of all large trees with trunks which are six inches or larger in diameter (measured six inches above ground level) located within 25 feet of the Residence or on other parts of the Lot which will be disturbed by construction. The survey shall clearly indicate which large trees will be saved and which shall be removed.

(b) A complete set of final construction plans which include floor plans; exterior elevations for all sides showing finish grades, roof plans, and material selections. Floor plans and front elevations shall be drawn at a scale of 1/4" = 1'. Side and rear elevations and roof plan shall be drawn at 1/4"=1' or 1/8"=1'.

(c) A final color plan with color chips for all exterior surfaces, including roofs, walls, shutters, trim and flatwork (if other than untinted concrete).

(d) A final landscape plan. Two sets of all plans and specifications shall be submitted to the Design Review Committee for review. Once approved, one set shall be signed and returned and one set shall be kept by the Design Review Committee for record.

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

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

7.10.1 The Design Review Committee may delegate the plan review responsibilities to one or more of its members or to architectural consultants it retains. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

7.10.2 The Design Review Committee shall have the right, at its discretion, to collect fees from applicants to reimburse the Association for direct expenses incurred in reviewing such plans and specifications. Such expenses may include the cost of services rendered by professional architects, landscape architects or engineers, and associated costs of postage, photocopies, etc.

7.10.3 By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design or for compliance with zoning and building ordinances; and by approving such plans and specifications, neither the Design Review Committee nor any member thereof, nor the Association, nor any member, officer or director thereof, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. None of said persons or entities shall be liable to any Owner or other person or entity for any damage, loss, cost or prejudice suffered or claimed on account of:

(a) The approval or disapproval of any plans, drawings and specifications, whether or not defective;

(b) The construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; or

(c) The development or manner of development of any property within the Neighborhood.

Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be a representation or warranty that said plans or specifications comply with applicable governmental ordinance or regulations, including zoning ordinances and building codes.

7.10.4 Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association may at any reasonable time, after reasonable notice to the Owner, enter upon any Lot without being deemed guilty of trespass in order to inspect Improvements constructed or being constructed on such Lot to ascertain that such Improvements have been or are being built in compliance with the plans and specifications approved by the Design Review Committee, the Design Standards and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed

sixty (60) days) after a request therefor from any Owner as to his Lot, which request shall contain an affirmative statement by such Owner of his good faith belief that he is in compliance with the approved plans and specifications, the Design Standards and the provisions thereof. If such inspection reveals that the Improvements located on such Lot have been completed in compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof, the Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded with the Register of Deeds, shall be conclusive evidence of compliance with the requirements of the Design Review Committee, the Design Standards and the provisions hereof as to the Improvements described in such recorded notice.

7.10.5 The Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the Design Standards. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ASSOCIATION MAY FIX A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000.00) FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL.**

**7.11 Public Approvals.** All pertinent requirements of public agencies shall be complied with in the development of each Lot, and all plans must be approved by the appropriate departments of the City. Without limiting the foregoing, the design of any fence crossing a drainage area must be reviewed and approved by the Director of Public Works of the City to assure that the fence does not restrict water flow. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and Neighborhood regulations, the Design Standards may be more restrictive as to land use restrictions, site development standards, landscape requirements or other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with public agency requirements, the more restrictive standards, approvals, or regulations shall govern. Final legal approvals permitting development and occupancy of each Lot and Residence will be made by the City.

## **ARTICLE 8**

### **USE AND OCCUPANCY RESTRICTIONS**

8.1. Lots and Owners shall be subject to the following use and occupancy restrictions:

8.1.1 **Residential Use.** Each Lot shall be used or occupied only for one single-family private Residence and for no other use or purpose. No trailer, garage, outbuilding or any structure of a temporary character shall at any time be used for human habitation, temporarily or permanently. Except as otherwise provided herein, no building or structure of any sort shall be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in the Residence in accordance with applicable ordinances of the City. Maintaining such a home office shall not result in the violation of these restrictions or permit advertising said office location (on or off site) or visitation by customers or clients at the Residence. Use of any Lot for commercial day care (child or

adult) purposes is specifically prohibited.

8.1.2 Leasing. No residence or Lot or any portion thereof may be leased for a period of less than six months. All leases shall be in writing and shall provide that the lease be subject to the terms of these Restrictions and the rules and regulations of the Association, and shall also provide that any failure by the lessee to comply with such terms shall be default under the lease. The Owner of the leased property shall be responsible for compliance by the lessee with these Restrictions and the rules and regulations of the Association.

8.1.3 Maintenance. Each Owner shall properly maintain his Lot and the Residence thereon in good condition and repair and in a neat, clean, orderly and attractive condition at all times. Trees, shrubs and lawns shall be maintained in good condition and attractive appearance at all times. Lawn grass shall be uniformly mowed and shall not be permitted to reach a height of more than four (4) inches. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's lot and adjacent public rights-of-way.

8.1.4 Utility and Drainage Easements. Within the easements reserved in the Neighborhood for the installation and maintenance of utilities and drainage facilities, no grading, planting, structure or other material shall be placed or maintained which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels. Easement areas on Lots and all improvements thereon shall be maintained continuously by the Lot Owners, except for those improvements for which a public authority or utility company is responsible.

8.1.5 Alteration of Common Facilities. No Owner shall improve, destroy or otherwise alter any Common Facilities without prior written consent of the Association.

8.1.6 Flagpoles, Doghouses, Yard Ornaments, Lawn Furniture, Recreational and Play Structures. No freestanding flagpole, doghouse, sculpture, fountain or other yard ornament, permanent lawn furniture or recreational or play structures may be installed, placed or maintained on the exterior of any building or on any Lot without the prior written approval of the Design Review Committee. (Outdoor furniture placed on decks or patios is exempt from approval requirements.) Except where specifically authorized in writing by the Design Review Committee, all outside doghouses or recreational or play structures (other than basketball goals) shall be located behind the back building line of the house. Outside doghouses shall have materials and colors that are compatible with the Residence.

8.1.7 Mailboxes. No freestanding mailboxes shall be permitted. Owners and residents shall use common mailboxes provided and maintained by the Association in locations in the Neighborhood determined by the Association and approved by the City and the US Postal Service.

8.1.8 Tennis Courts, Swimming Pools and Hot Tubs. No tennis court or above-

ground swimming pool shall be installed or maintained on any Lot; provided, however, that above-ground hot tubs may be installed and maintained with prior written approval by the Design Review Committee. No in-ground swimming pool or related improvements, facilities or equipment shall be installed or maintained upon any Lot unless the location, design, materials and colors are approved in writing by the Design Review Committee. All pools shall be fenced and all hot tubs shall be fenced or otherwise adequately screened, all in accordance with the provisions of this Declaration. All pools and hot tubs shall be kept clean and maintained in operable condition at all times.

8.1.9 Signs. No permanent or temporary Sign of any kind shall be displayed to public view in any manner in the Neighborhood without the prior approval of the Association, except:

(a) One Sign for each Lot, not exceeding 100 square inches in area, upon which is exhibited the street number for the Lot or the name of the Lot Owner, or both;

(b) One Sign for each Lot not exceeding 1,000 square inches in area, advertising the Residence for sale ("For Lease" signs are expressly prohibited);

(c) Street markers, traffic Signs and other Signs displayed by governmental agencies or utilities on designated easements and rights-of-way;

(d) Such Signs as may be required by legal proceedings, of the prohibition of which is precluded by law;

(e) Signs not exceeding 1,000 square inches in area promoting candidates or issues but limited to only forty-five (45) days before and two days after the day of election and only (1) one Sign per candidate or issue; and (1) one garage sale Sign not exceeding 1,000 square inches in area is permitted on the Lot when the sale is being held, provided such Signs are removed within 24 hours after the close of the sale. Except as otherwise permitted by the Design Review Committee in writing, all Residences shall have a house number place or house numbers in the style(s) approved by the Design Review Committee. No sign shall be placed or maintained on any Common Facility without the approval of the Board. If any Sign other than those described above shall be displayed in the Neighborhood, the representatives of the Association shall have the right to remove such Sign.

8.1.10 Basketball Goals. No exterior basketball goals shall be erected or maintained on any Lot without the prior written consent of the Design Review Committee. Basketball goals shall be permanently installed and shall have transparent backboards and black posts. Basketball hoops and goals attached to a building are specifically prohibited. There shall be only one basketball goal per Lot. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.



8.1.11 Animals. No animal of any kind, including livestock, poultry and poisonous reptiles, shall be kept on any Lot, except that dogs, cats and other commonly accepted household pets of a number and type permitted by ordinances and regulations of the City, as the same may be amended from time to time, excluding, however, any dog included within the definition of "vicious dogs" pursuant to City ordinances and regulations, may be kept, provided they are not kept or bred for any commercial purpose and do not constitute a nuisance to residents of the Neighborhood. In no event, however, shall more than three dogs or cats, or combination thereof, be kept on any Lot. All permitted pets shall be kept within a Residence or fenced area, or on a leash attended by a responsible person at all times. In the event an otherwise permitted animal, in the discretion of the Association, constitutes a nuisance or endangers the safety or welfare of any resident of the Neighborhood, such animal shall be removed from the Neighborhood by the owner thereof. In the event the owner fails or refuses to remove the animal, the Association may cause the animal to be removed. Owners shall immediately clean up after their pets on all streets, Common Facilities and Lots owned by others.

8.1.12 Offensive Activities, Nuisances, Dumping. No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes, brush, debris or other refuse be thrown, placed or dumped upon any Lot or Common Facilities, nor shall anything be done which may be or become an annoyance or a nuisance to residents of the Neighborhood or any part thereof.

8.1.13 Trash Storage. No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a Residence, except after sundown of the day before or upon the day of regularly scheduled trash collection and except for grass bags placed in the back or side yard pending regularly scheduled trash collection.

8.1.14 Solar Collectors. No solar collector of any kind or type shall be erected or maintained upon any Lot without the prior written consent of the Design Review Committee.

8.1.15 Antennas, Satellite Dishes. No exterior radio, television, short wave, citizens' band or other antenna of any kind, including satellite dishes or other devices for the reception or transmission of radio, microwave or similar signals, shall be placed or maintained on any Lot without the prior written approval of the Design Review Committee. Approval of such devices shall be based on criteria such as location, size, signal strength, aesthetic appearance, landscaping, screening and other legally permissible considerations so as to reasonably control the impact of such devices on the Neighborhood and all parts thereof. All such devices shall be installed in accordance with and shall comply in all respects with City requirements. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes (maximum 20 inches in diameter) may be installed, with the prior written consent of the Design Review Committee, so as not to be readily visible from the street. To the extent that this restriction may be inconsistent with the regulations of the Federal Communications Commission ("FCC"), as amended from time to time, this restriction shall be deemed modified to the extent necessary to comply with such FCC regulations and still provide such limitations as are consistent with the intent of this

restriction.

8.1.16 Garage Sales. No garage sales, sample sales or similar activities shall be held within the Neighborhood without the prior written consent of the Association.

8.1.17 Sound Devices. No exterior speaker, horn, whistle, siren, bell or other sound device, except intercoms, devices used exclusively for security purposes and stereo speakers used in accordance with any rules specified by the Association shall be located, installed or maintained upon any Lot.

8.1.18 Exterior Lights. No exterior lights attached to a Residence shall be located more than 30 feet above ground level and no free-standing exterior lights shall be located more than 10 feet above ground level. Except for holiday lights, all exterior lighting shall be white and not colored. All landscape lighting must be approved in writing by the Design Review Committee. Exterior lights shall be located and oriented so as to avoid glare and excessive light spillage onto adjacent Lots, Common Facilities or public streets.

8.1.19 Utility Lines. All residential utility transmission lines shall be underground.

8.1.20 Connections to Sanitary and Storm Sewers. No water from any roof or downspout, basement or garage drain or any surface drainage shall be placed in or connected to any sanitary sewer line; nor shall any connection of any kind be made to a storm sewer line.

8.1.21 Fuel Storage Tanks. No outside or underground tank for the storage of fuel or other liquids shall be installed, placed or maintained on any Lot.

8.1.22 Vehicles and Equipment. No automobile, truck, motorcycle, motorbike, van, bus, motor home, recreational vehicle, camper, boat trailer or other vehicle, and no lawn mower or other motorized or wheeled outdoor equipment or apparatus shall be left, maintained, repaired, serviced or stored on any Lot, except in an enclosed building. Overnight parking of motor vehicles or trailers of any type or character in public streets, Common Facilities or vacant lots is prohibited. Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed. Nothing in this section, however, shall be so construed as to prohibit the regular parking of not more than two licensed and operative automobiles of any type (including pick-up trucks) in a reasonable state of repair and preservation or the temporary parking of recreational vehicles for the purpose of loading or unloading (maximum of two nights every 14 days) on any paved driveway on any Lot.

8.1.23 Garage Doors. All garage doors shall remain closed at all times except when necessary for entry or exit.

8.1.24 Clotheslines. No exterior clothesline or clothesline pole shall be erected or maintained on any Lot.

8.1.25 Holiday Decorations. No exterior banners and/or holiday decorations (including decorative lights) shall be installed, placed or maintained on any Lot except during a one hundred five (105) day period beginning October 15<sup>th</sup> of each calendar year.

8.1.26 Artificial Plants. No artificial flowers or plants shall be permitted on the exterior of any Residence or in any yard.

8.1.27 Awnings, Equipment, Fixtures. No awning or canopy, or any unsightly equipment or fixture shall be installed, placed or maintained on the exterior of any structure or on any Lot, nor shall any air conditioning equipment or unsightly projection be attached to or placed in front of any Residence without the prior written consent of the Design Review Committee.

8.2 Construction Period Requirements. During construction periods on any Lot, the Owner and all parties involved in such construction shall be responsible for maintaining the Lot in a clean and orderly manner; for controlling erosion and runoff while the site is in a disturbed condition; and for insuring that mud and debris tracked onto public streets is promptly removed. Adequate erosion and silt control procedures shall be followed, including the use of barricades, temporary construction fence, straw bales or silt fence, to protect adjacent Lots, Common Facilities and adjacent property.

8.3 Compliance With City Requirements. Notwithstanding any provision of this Declaration to the contrary, all property within the Neighborhood shall be used only in compliance with federal, state and city requirements. In every case in which any provision of this Declaration is at variance with such requirements, the more restrictive provision shall govern and control.

8.4 Enforcement. The Association or its authorized agents may enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses and such fines as may be imposed by the rules and regulations adopted by the Association, shall be deemed a special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of this Declaration. All remedies described in Article 12 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, tenant, occupant or other party of any provision of this Article 8.

## **ARTICLE 9**

### **MORTGAGES**

9.1 Defaults. Notwithstanding anything in this Declaration to the contrary, no breach or default of any term, provision, covenant, condition, restriction or easement contained in this Declaration shall defeat or adversely affect the lien of any mortgage on any property in the Neighborhood; however, except as herein specifically provided otherwise, each and all of said terms, provisions, covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner who acquires its title or interest by foreclosure, deed in lieu of foreclosure or the exercise of any other right or remedy under a mortgage, including the obligation to pay all Assessments and Costs arising or accruing thereafter, in the same manner as any other Owner. An Owner who leases his Lot to another party shall be responsible for assuring compliance

by the tenant with all of the provisions of this Declaration, the Association's Articles of Incorporation and Bylaws and the rules and regulations adopted by the Association, all as amended and supplemented from time to time, and such Owner shall be jointly and severally responsible with the tenant for any violation by the tenant.

**9.2 Enforcement After Foreclosure Sale.** Without limiting any other rights or remedies herein provided or otherwise available at law or equity, an action to abate any default or breach of any of the terms, provisions, covenants, conditions, restrictions or easements contained in this Declaration may be brought against a purchaser who has acquired title to or any interest in a Lot through foreclosure of a mortgage and the subsequent sale of the Lot (or through any equivalent proceeding), and against the successors in interest of such purchaser, even though the default or breach existed prior to the purchaser's acquisition of title or interest in the Lot.

**9.3 Exercise of Owner's Rights.** During the pendency of any proceeding to foreclose a mortgage (including any period of redemption), the mortgagee, or a receiver appointed in any such action, may (but need not), if and to the extent permitted by such mortgage or by the other documents evidencing or securing the loan secured by such mortgage, exercise any or all of the rights and privileges of the Owner under this Declaration, including the right to vote as a member of the Association in the place and stead of the Owner.

## **ARTICLE 10**

### **REMEDIES**

**10.1 Enforcement.** In the event of any breach or default by any Owner, occupant, or other person or entity ("Defaulting Party") under this Declaration, the Association shall have all of the rights and remedies provided in this Declaration and otherwise available at law or equity, and shall have the right (but not the obligation) to prosecute any action or other proceeding against the Defaulting Party for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided, or for the appointment of a receiver for the affected Lot, or for damages or specific performance, or for judgment for the payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the affected Lot or the solvency of the Defaulting Party. Any and all such rights and remedies may be exercised by the Association at any time and from time to time.

No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during his ownership.

Whenever the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Association may file with the office of the Register of Deeds a certificate setting forth public notice of the nature of the breach and the Lot involved. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies, nor shall any such delay or failure be construed as a waiver of that or any other violation.

**10.2 Expenses of Enforcement.** All expenses of the Association, or any other person having rights of enforcement under this Declaration, in connection with any action or proceeding described in or permitted by this Article 10, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the highest rate allowable under Kansas law, shall be charged to and assessed against the Defaulting Party and shall be deemed a special Assessment against the Owner of the affected Lot, with respect to which special Assessment the Association shall have a lien as provided in Article 3.

**10.3 Right to Cure.** The Association and any manager or managing agent retained by the Association shall have the authority (but not the obligation) to correct any breach or default under this Declaration and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the highest rate allowable under Kansas law, shall be charged to and assessed against the Defaulting Party as a special Assessment, with respect to which special assessment the Association shall have a lien as provided in Article 3.

**10.4 Waiver.** No waiver of any violation shall be effective unless In writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered waiver by the Association, acting upon a decision of the Board respecting a specific violation shall constitute and be deemed as a waiver of such violation by all other persons and entities.

**10.5 Limitation of Liability.** Notwithstanding anything to the contrary in this Declaration, it is expressly agreed that neither Association, its directors, officers, agents, and Design Review Committee members shall have any personal liability to any Owner arising under, in connection with, or resulting from (including resulting from any action or failure to act with respect to) this Declaration, the Association, the Design Review Committee, the Association's Articles of Incorporation or Bylaws, the Design Standards, or the rules or regulations adopted by the Association, or for any action taken or not taken pursuant to authority granted to the Association herein or therein.

## **ARTICLE 11**

### **AMENDMENT AND TERMINATION**

**11.1 Amendment by Association.** The Association shall have the right, power and authority to amend, modify, revise or add to any of the terms of this Declaration (as from time to time amended, modified, revised or supplemented) by a written instrument setting forth the entire amendment, which amendment shall become effective when duly adopted, executed, acknowledged and recorded with the Register of Deeds. Any proposed amendment must be first approved by a majority of the Board and then adopted by the members of the Association. Amendments may be adopted by the members:

- (a) At a meeting of the members by the affirmative vote of at least two-thirds of all members entitled to vote at such meeting; or

(b) Without a meeting if all members have been duly notified of the proposed amendment and if two-thirds of all members entitled to vote at such a meeting, if held, consent to the amendment.

**11.2 Term and Termination.** The provisions of this Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2030. Thereafter, unless one year prior to January 2, 2030, an instrument executed in one or more counterparts by at least a majority of all Association members then entitled to vote shall be recorded with the Register of Deeds directing the termination of this Declaration, this Declaration shall be automatically continued without any further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years each; provided, that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as above provided in this section.

## **ARTICLE 12**

### **GENERAL PROVISIONS**

**12.1 Notices.** All notices, requests, consents, approvals and other communications required or permitted under this Declaration or the Association's Bylaws shall be in writing and shall be addressed to the Association at the address specified in the Association's Bylaws, and to each Owner and member at the last address shown for such Owner or member on the records of the Association. Any party may designate a different address or addresses for itself by giving written notice of its request. Notices, requests, consents, approvals and other communications shall be deemed delivered when mailed by United States mail, postage prepaid, when delivered in person or by courier, or delivered via facsimile transmission (fax).

**12.2 Association Address.** The Association shall notify each member whose address is listed with the Association of the time and place of regular and special meetings of the members of the Association, and the place where payments shall be made and any other business in connection with the Association may be transacted.

**12.3 Terminology.** The words "include," "includes" and "including" shall be deemed followed by the phrase "without limitation." The words "herein," "hereof," "hereunder" and similar terms shall refer to this Declaration unless the context requires otherwise. Whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

**12.4 Severability.** If any provisions of this Declaration or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and of the application of such provision in other circumstances shall not be affected thereby.

**12.5 Rule Against Perpetuities; Observance of Laws.** The Association shall at all times observe all applicable state, county, city and other laws or regulations. If at any time any of the easements, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule of law known as the "Rule Against Perpetuities," then such

provision shall become null and void, but no other parts of this Declaration not in conflict herewith shall be affected thereby.

**12.6 Approvals.** Wherever the approval or consent of the Association, the Board or the Design Review Committee or any other person or entity is required, such approval or consent shall require the prior written approval of such approving or consenting party to be given in its sole discretion. Neither the Association, nor any member of the Design Review Committee or the Board shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines, or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any such rules, regulations, restrictions or guidelines.

### **ARTICLE 13**

#### **COVENANTS RUNNING WITH THE LAND**

Each Owner, by the acceptance of a deed, conveyance or other instrument evidencing or creating an interest or estate in any land within the Neighborhood, and each person acquiring a membership in the Association, and the heirs, legal representatives, successors and assigns of each of the foregoing, accepts the same subject to all of the terms, provisions, covenants, conditions, restrictions, reservations, easements and liens and subject to all of the rights, benefits and privileges of every kind which are granted, created, reserved or declared by this Declaration, and all impositions and obligations hereby imposed, all of which shall be deemed covenants running with the land and equitable servitude, and shall bind every person and entity at any time having any interest or estate in any land within the Neighborhood, and shall inure to the benefit of any such person or entity, as though the provisions of this Declaration were reflected at length in each and every deed, conveyance or other instrument evidencing or creating such interest or estate.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned officers have executed this Amended and Restated Declaration as of the date first above written.

PRAIRIE BROOK HOMEOWNERS ASSOCIATION, INC.

By: Frank R. Carella  
President

Printed Name: Frank R. Carella

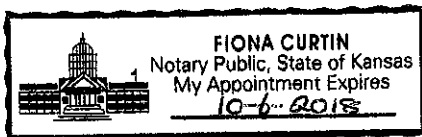
By: [Signature]  
Secretary

Printed Name: RICHARD KUBIK JR.

STATE OF KANSAS            )  
  ) ss  
COUNTY OF JOHNSON        )

ON THIS 30 day of AUGUST, 2018, before me, the undersigned, a Notary Public in and for said County and State, personally appeared FRANK CARELLA AND RICHARD KUBIK, known to me to be the person who executed the foregoing instrument and who, being by me duly sworn, acknowledged that he/she is the President of the Board of Directors of the Prairie Brook Homeowners Association and that he/she executed such instrument on behalf of said Association by authority of its members, and said person acknowledged the execution of said instrument to be the act and deed of said Association.

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



Fiona Curtin  
Notary Public  
Printed Name: FIONA CURTIN

My Commission Expires:  
10-6-2018