



Sedgwick County  
Register of Deeds - Tonya Buckingham  
Doc.#/Flm-Pg: 30037499

Receipt #: 2221022  
Pages Recorded: 31

Recording Fee: \$531.00

Cashier: ehammer

Authorized By *Tonya Buckingham*

Date Recorded: 03/04/2021 10:39:39 AM



**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS, DISCLOSURES AND EASEMENTS  
OF  
KECHI BUSINESS PARK**

**AFTER RECORDING, RETURN TO:**

#781569 03/03/21

TRIPLETT WOOLF GARRETSON, LLC  
Attn: Ron H. Harnden  
2959 N. Rock Road, Suite 300  
Wichita, Kansas 67226  
(316) 630-8100

## TABLE OF CONTENTS

<b>RECITALS</b> .....	<b>1</b>
<b>ARTICLE 1 - DEFINITIONS</b> .....	<b>1</b>
SECTION 1.01. "ASSOCIATION" .....	1
SECTION 1.02. "BOARD" .....	1
SECTION 1.03. "COMMON AREA" .....	1
SECTION 1.04. "DECLARANT" .....	2
SECTION 1.05. "DRC" .....	2
SECTION 1.06. "LOT" .....	2
SECTION 1.07. "MEMBER" .....	2
SECTION 1.08. "OWNER" .....	2
SECTION 1.09. "PERIOD OF DECLARANT'S CONTROL" .....	2
SECTION 1.10. "PROPERTY" .....	2
SECTION 1.11. "STRUCTURE" .....	2
<b>ARTICLE 2 - MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION FORMATION AND OPERATION</b> .....	<b>3</b>
SECTION 2.01. MEMBERSHIP .....	3
SECTION 2.02. VOTING RIGHTS .....	3
SECTION 2.03. FORMATION .....	4
SECTION 2.04. INITIAL OPERATION.....	4
SECTION 2.05. BOARD OF DIRECTORS .....	4
<b>ARTICLE 3 - PROVISIONS CONCERNING THE COMMON AREA</b> .....	<b>4</b>
SECTION 3.01. USE OF COMMON AREA; EMERGENCY ACCESS .....	4
SECTION 3.02. TITLE TO THE COMMON AREA .....	5
SECTION 3.03. RESERVATION OF RIGHTS IN THE COMMON AREA AND LOTS .....	5
SECTION 3.04. DAMAGE BY OWNER.....	5
<b>ARTICLE 4 - COVENANTS CONCERNING ASSESSMENTS AND LIENS</b> .....	<b>5</b>
SECTION 4.01. GENERAL ASSESSMENTS.....	5
SECTION 4.02. DETERMINATION OF GENERAL ASSESSMENTS.....	6
SECTION 4.03. ASSESSMENT; EXEMPTIONS; TRANSFER ASSESSMENT; PRORATION.....	6
SECTION 4.04. SPECIAL ASSESSMENTS .....	6
SECTION 4.05. COLLECTION AND EXPENDITURES .....	7
SECTION 4.06. ASSESSMENTS AND LIENS; DELINQUENCY .....	7
SECTION 4.07. NOTICE OF DELINQUENCY.....	7
SECTION 4.08. ENFORCEMENT OF LIENS .....	8
SECTION 4.09. SUBORDINATION OF ASSESSMENT LIEN .....	8
SECTION 4.10. LIABILITY OF OWNERS .....	8
SECTION 4.11. INTEREST ON DELINQUENT ASSESSMENTS .....	8
SECTION 4.12. USE OF GENERAL ASSESSMENT FUNDS.....	8
SECTION 4.13. INJUNCTION AND SPECIFIC PERFORMANCE .....	9
SECTION 4.14. FINES .....	9
SECTION 4.15. ALL LEGAL AND EQUITABLE REMEDIES AVAILABLE.....	9
<b>ARTICLE 5 - COVENANTS FOR MAINTENANCE; ENFORCEMENT</b> .....	<b>10</b>
<b>ARTICLE 6 - ARCHITECTURAL CONTROL; POLICY GUIDELINES; BUILDER APPROVAL</b> .....	<b>11</b>
SECTION 6.01. APPROVAL REQUIRED .....	11

SECTION 6.02.	FORM OF PLANS AND SPECIFICATIONS .....	11
SECTION 6.03.	REMOVAL AND ALTERATION OF STRUCTURES, LIENS .....	12
SECTION 6.04.	RIGHT OF INSPECTION .....	13
SECTION 6.05.	MEMBERSHIP OF DRC .....	13
SECTION 6.06.	DISCLAIMER AS TO DRC APPROVAL .....	13
SECTION 6.07.	NO WAIVER OF FUTURE APPROVALS .....	14
SECTION 6.08.	VARIANCES .....	14
<b>ARTICLE 7 - GENERAL COVENANTS, RESTRICTIONS AND DISCLOSURES .....</b>		<b>14</b>
SECTION 7.01.	STRUCTURES .....	14
SECTION 7.02.	DIVISION OF LOTS .....	14
SECTION 7.03.	OFF-STREET PARKING REQUIREMENT .....	14
SECTION 7.04.	SIGNS .....	15
SECTION 7.05.	RULES; LAWS; LEASE PROVISION REGARDING COMPLIANCE .....	15
SECTION 7.06.	LOT USE .....	15
SECTION 7.07.	REQUIREMENTS CONCERNING LANDSCAPING .....	16
SECTION 7.08.	DRAINAGE .....	16
SECTION 7.09.	NO EXCAVATIONS .....	17
SECTION 7.10.	PREFABRICATED OR USED BUILDINGS .....	17
SECTION 7.11.	VIEW .....	17
SECTION 7.12.	EROSION; WATER POLLUTION CONTROL PERMIT AND RELATED MATTERS .....	17
SECTION 7.13.	SAFETY AND SECURITY .....	17
SECTION 7.14.	RESPONSIBILITY FOR REPAIR AND REPLACEMENT .....	17
SECTION 7.15.	UTILITY CONNECTIONS AND MECHANICAL EQUIPMENT .....	18
SECTION 7.16.	FENCES .....	18
SECTION 7.17.	USE OF HAZARDOUS MATERIAL .....	18
SECTION 7.18.	RULES AND REGULATIONS; NUISANCE .....	19
SECTION 7.19.	DAMAGE TO COMMON AREA .....	19
SECTION 7.20.	DUTY OF OWNERS TO INSURE .....	19
<b>ARTICLE 8 - THE ASSOCIATION .....</b>		<b>19</b>
SECTION 8.01.	POWERS AND DUTIES .....	19
SECTION 8.02.	OPERATIONS AND EXPENSES .....	21
<b>ARTICLE 9 - ENFORCEMENT .....</b>		<b>22</b>
<b>ARTICLE 10 - ADDITIONAL LAND .....</b>		<b>22</b>
<b>ARTICLE 11 - NOTICE OF POSSIBLE SPECIAL ASSESSMENTS .....</b>		<b>22</b>
<b>ARTICLE 12 - ASSIGNMENT; LIMITATION OF LIABILITY; EASEMENTS .....</b>		<b>23</b>
SECTION 12.01.	ASSIGNMENT .....	23
SECTION 12.02.	LIMITATION OF LIABILITY .....	23
SECTION 12.03.	EASEMENTS IN FAVOR OF DECLARANT .....	23
SECTION 12.04.	EASEMENTS TO ADDITIONAL LAND .....	23
<b>ARTICLE 13 - MISCELLANEOUS .....</b>		<b>24</b>
SECTION 13.01.	PROVISIONS BINDING ON GRANTEES .....	24
SECTION 13.02.	INTERPRETATIONS OF RESTRICTIONS .....	24
SECTION 13.03.	CONSTRUCTION AND VALIDITY OF RESTRICTIONS; SEVERABILITY; PERPETUITIES .....	24
SECTION 13.04.	ASSIGNMENT OF POWERS .....	24
SECTION 13.05.	WAIVER AND EXCEPTIONS .....	24
SECTION 13.06.	TITLES .....	25
SECTION 13.07.	SINGULAR AND PLURAL, MASCULINE AND FEMININE .....	25

SECTION 13.08.	SUCCESSORS-IN-INTEREST .....	25
SECTION 13.09.	TERM .....	25
SECTION 13.10.	AMENDMENTS .....	25
SECTION 13.11.	MORTGAGE PROTECTION CLAUSE .....	26
SECTION 13.12.	NO LIABILITY FOR PREPARATION OF DECLARATION .....	26
SECTION 13.13.	DECLARANT'S ACTIVITIES .....	26
SECTION 13.14.	NO CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES .....	26
SECTION 13.15.	NO TERMINATION FOR BREACH .....	26

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, DISCLOSURES AND EASEMENTS OF KECHI BUSINESS PARK (“Declaration”), is made this \_\_\_\_\_ day of March, 2021, by Alley Investments, L.L.C., a Kansas limited liability company (hereafter referred to as “Declarant”).

RECITALS:

A. Declarant is the owner of Property (as defined below) in Kechi, Kansas, and desires to establish and develop a commerce park therein;

B. Declarant desires to establish binding covenants, conditions and restrictions applicable to the Property;

C. It is the purpose and intention of the Declarant that the Property shall be held and/or conveyed subject to the provisions of this Declaration; and

D. Declarant desires to create the Association (as defined below) for the purpose of carrying out the responsibilities set forth herein.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, and conveyed subject to the following easements, covenants, and conditions, and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title, or interest therein, or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of the Declarant and each Owner (as defined below) thereof.

**ARTICLE 1**

**Definitions**

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

Section 1.01. “Association” shall mean Kechi Business Park Association, a non-profit corporation to be created under the laws of the State of Kansas.

Section 1.02. “Board” shall mean the Board of Directors of the Association.

Section 1.03. “Common Area” shall mean, subject to the portion of the Property and improvements thereon, to be owned by Declarant or the Association, as follows:

Reserve A of the Property

Section 1.04. "Declarant" shall mean Alley Investments, L.L.C., a Kansas limited liability company, and its successors and assigns; provided any such successors or assigns shall acquire for the purpose of development or sale all or any portion of the remaining unsold Lots, and in the instrument of conveyance to any such successor or assign, such successor or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance. Upon such designation of a successor Declarant, all rights and obligations of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the Property, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

Section 1.05. "DRC" shall mean the design review committee referenced in Section 6.01 hereof.

Section 1.06. "Lot" shall mean each lot located within the Property, as established by the plat or a replat of the Property, lot split, boundary shift or other adjustments or subdivision of one or more Lots; provided, that where land has been attached or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a "Lot."

Section 1.07. "Member" shall mean and refer to each and every person or entity holding membership in the Association.

Section 1.08. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to a Lot, excluding Owners who have sold their interest under an executory contract and are no longer occupying their Lot; during the term of such an executory contract, the purchaser shall be considered the Owner hereunder.

Section 1.09. "Period of Declarant's Control" shall mean the period from the date hereto until the earlier to occur of one (1) year after the date Declarant no longer owns a Lot or the date the Declarant fully and specifically relinquishes its duties and powers as provided in Section 8.01 B below.

Section 1.10. "Property" shall mean and refer to:

Kechi Business Park, an Addition to Kechi, Sedgwick County, Kansas

Section 1.11. "Structure" shall mean and include any structure, improvement or device, the placement of which upon any Lot will affect the appearance or drainage of such Lot, including, by way of illustration and not limitation, any building, outbuilding, parking area, loading area, sign, screening materials, light pole, antenna, tower, fence, flag pole, curbing, paving, wall, satellite dish, signboard, and related structure or any temporary or permanent improvement to such Lot. "Structure" shall also include (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, 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 (ii) any change in the grade

of any Lot other than in accordance with drainage guidelines, standards and plans established by the Declarant, DRC, the municipality having jurisdiction over the Lots or the Lot specific drainage plan, whichever is most stringent.

## ARTICLE 2

### Membership and Voting Rights; Association Formation And Operation

Section 2.01. Membership. The Association shall have as Members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members (whether or not a building is located on its Lot), and there shall be no other qualification for membership. There shall be only one (1) membership per Lot. If any Lot is owned by more than one person or entity, all co-owners shall share the privileges of such a membership, subject to all provisions hereof, and in the bylaws. The membership rights of any Owner which is not a natural person, may be exercised by any officer, director, partner or trustee, or by individual designated from time to time by the Owner in a written instrument provided to the Association. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

#### Section 2.02. Voting Rights.

A. All Members, so long as they shall qualify under this Article 2, shall be entitled to vote on each matter submitted to a vote at a meeting of the Members; provided, if a Lot is owned or held by more than one (1) Member in any manner, such Members shall collectively be entitled to only one (1) vote as to such Lot, as they agree among themselves to jointly advise the secretary or other officer conducting such meeting. Absent such joint advice, if more than one (1) Member of a Lot shall cast a vote, then all votes for such Lot shall be invalid. No fractional votes shall be permitted. One (1) vote is hereby allowed for each Lot; provided, Declarant shall be entitled with respect to each Lot owned by it to four (4) votes for each Lot.

B. Any Member (other than Declarant) who is in violation of this Declaration, as reasonably determined by the Declarant or, after the Period of Declarant's Control, the Board (after any applicable notice and cure period, if any, required hereunder), shall not be entitled to vote during any period during which such violation continues. Any Member who fails to pay any assessments established pursuant to the terms hereof (after notice and a thirty (30) day cure period) shall not be entitled to vote during the period in which such assessments are due and unpaid.

C. The Board shall adopt such bylaws, consistent with the terms hereof, the articles of incorporation and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper. In the event of any conflict between the terms of the Declaration and the bylaws, the terms hereof shall control.

D. A Member may delegate by proxy all or any portion of its voting rights in accordance with the bylaws of the Association.

Section 2.03. Formation. The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Kansas. Declarant shall form the Association following recordation hereof, and shall convey the Common Area to the Association on or before the expiration of the Period of Declarant's Control by quitclaim deed, in an "AS IS" condition subject to all easements, rights-of-way, restrictions and covenants of record, but free from any lien, mortgage or other than liens for real property taxes and assessments. The conveyance of the Common Area by Declarant to the Association is a ministerial task that does not require acceptance by the Association.

Section 2.04. Initial Operation. Notwithstanding the provisions of this Declaration, the operation of the Association and the performance of its rights hereunder shall be within the absolute and exclusive control of the Declarant during the Period of Declarant's Control. During the Period of Declarant's Control, Declarant may perform and exercise any and all rights and obligations hereunder related to the Association and the Board and Declarant may appoint and remove in its discretion the members of the Board and any committee of the Association. Each Owner, by acceptance of a deed to a Lot, vests Declarant with the authority to fully exercise its rights under this Section 2.04 and in Sections 6.05 and 8.01 B hereof. Further, the appointment of the members of the DRC by Declarant, pursuant to Section 6.05 hereof, shall extend beyond the Period of Declarant's Control until such time, if any, as Declarant specifically assigns, in the exercise of its sole discretion, such right by written instrument, in accordance with Section 6.05, separately and apart from the expiration of the Period of Declarant's Control.

Section 2.05. Board of Directors. All actions of the Association shall be taken on its behalf by the Board, or committees established thereunder, except for (a) when a vote of the Members is specifically required by this Declaration, the articles of incorporation, the bylaws or applicable law, and (b) performance of Declarant's rights hereunder during the Period of Declarant's Control.

### ARTICLE 3

#### Provisions Concerning the Common Area

Section 3.01. Use of Common Area; Emergency Access. Except for surface or subsurface drainage in accordance with Section 7.08 below from Lot to Lot or across Common Area, no Owner, occupant or other person or entity may conduct any activity not otherwise specifically provided by this Declaration or construct or place any improvement on the Common Area, without the prior authorization by Declarant, during the Period of Declarant's Control, or the Board thereafter. The Declarant, during the Period of Declarant's Control, or the Board thereafter, on behalf of the Association, may grant easements, rights-of-way, licenses, or dedicate or transfer all or any part of the Common Area to any public agency, authority, utility for such purposes and subject to such conditions as may be reasonably determined by the Declarant or the



Board, as applicable, provided, however that such easements, dedications and transfers shall not unreasonably interfere with the intended use of the Common Area. An emergency access gate/fence and other appurtenances, including markers, has, or will be, installed on the Common Areas.

Section 3.02. Title to the Common Area. Declarant, and affiliated entities, may (but shall not be obligated to) retain the title to the Common Area during the Period of Declarant's Control.

Section 3.03. Reservation of Rights in the Common Area and Lots. Notwithstanding any other provision of this Declaration, Declarant reserves for itself during the Period of Declarant's Control, and for the Board on behalf of the Association, the right to grant rights-of-way and easements within the Common Area. Additionally, Declarant specifically reserves for itself, its successors and assigns during such period, and for the Association, together with their respective contractors, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any monument sign, entrance treatment, fence, wall, walkway, water sprinkler system, plantings and other landscaping (including water wells, sprinkler controls and electric meters and lines associated therewith) and/or any signage pertaining to or serving the Property or Common Area within the Common Area due to oversight, or any other improvement located within the Common Area.

Section 3.04. Damage by Owner. Notwithstanding anything to the contrary appearing elsewhere herein, in the event that any plantings, wall, fence, hedge, landscaping or other improvements within the Common Area are damaged or destroyed through the negligence or intentional act of an Owner, its employees, family members, or its contractor(s), such Owner shall pay for the actual cost of the repair and replacement thereof.

## ARTICLE 4

### Covenants Concerning Assessments and Liens

Section 4.01. General Assessments. For the purpose of providing funds for the operation of the Association, for the purposes described in Section 4.12 below and as otherwise provided in this Declaration, for the operation, maintenance, care and improvement of the Common Area, and to afford the Association (and Declarant, during the Period of Declarant's Control) the means and resources necessary to carry out its rights, duties and functions hereunder and under its articles of incorporation and bylaws, together with the general and implied powers of a not-for-profit corporation, the Association shall have the right, in each year, beginning with the completion of the first building on a Lot, and the issuance of a certificate of occupancy therefor, to assess, except as specifically provided in this Article, against each Lot a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, semiannually or quarterly, as specified from time to time by the Board (or the Declarant during the Period of Declarant's Control), from time to time. The amount of the initial general assessment shall be initially established by Declarant

upon notice given to the Owners. In the event a Lot is initially deeded to an Owner which is not exempt from the payment of general assessments hereunder other than on the 1st day of a calendar year, the assessment for such initial calendar year shall be prorated. The Board (or Declarant) will notify all Owners stating the amount of the assessment and when payment is due; provided, in no event shall payment be due sooner than thirty (30) days following the notice of such assessment is mailed by the Board or Declarant. The obligation of any Owner to pay assessments hereunder is not dependent upon there being improvements erected thereon. No Owner have any right to withhold payment of assessments, general or special, hereunder by virtue of the nonpayment thereof by any other Owner or the violation of these covenants, conditions and restrictions or any rule or regulation promulgated by the Declarant or the Association.

Section 4.02. Determination of General Assessments. The Board or the Declarant during the Period of Declarant's Control shall, prior to January 1 (or as soon thereafter as practicable) of each calendar year following the commencement of general assessments, determine the total amount to be raised by the general assessment charges for the next succeeding year based upon a budget. Promptly following such determination, the Owners shall be notified in writing concerning the amount of the per Lot general assessments for the upcoming calendar year and provided a copy of the budget.

Section 4.03. Assessment; Exemptions; Transfer Assessment; Proration.

A. Except as otherwise provided herein, all general assessments and special assessments assessed pursuant to Article 4 shall be made against each Lot on an equal basis; provided, in view of its expenditures in connection with the Common Area, Declarant, and each Lot owned by Declarant on which a building is not completed, shall be exempt from imposition of any general or special assessments under this Article 4, including, but not limited to, assessments referenced in Sections 4.01 and 4.04. At such time as a building is constructed and completed on a Lot owned by Declarant, the exemption as to that specific Lot shall expire upon such completion.

B. 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 subsection A 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 in accordance with the provisions hereof.

Section 4.04. Special Assessments.

A. In addition to general assessments, Declarant, and following the Period of Declarant's Control, the Board 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 against each Lot (subject to the exemption contained in Section 4.03 A above) for the purpose of providing additional funds (not sufficiently available through general

assessments) to carry out its duties and other functions and purposes contemplated hereunder and to make improvements or expenditures. No such special assessment under this subsection A shall be valid unless two-thirds (2/3) of the votes cast, in person or by proxy, at an annual or special meeting of the Members shall approve the same. Any special assessments hereunder shall become a lien against each individual Lot (subject to the exemption specified in Section 4.03 A above) in the same manner otherwise provided for in this Article. 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 hereunder.

B. The Declarant, during the Period of Declarant's Control, and thereafter the Board shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner to the Association for any breach by such Owner of any of the provisions of this Declaration or whose negligent act or omission, or the negligent act or omission of his employees, invitees, licensees or tenants results in the expenditure of money by the Declarant or the Association, in an amount equal to such expenditures plus interest and charges thereon, as provided for in this Declaration. Such special assessments shall be due and payable by such Owner to the Association or Declarant, as applicable, upon demand.

Section 4.05. Collection and Expenditures. The Association, or the Declarant, during the Period of Declarant's Control, shall have the 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, including reasonable attorneys' fees, and interest to the delinquent Owner for the late payment or nonpayment thereof, as provided in this Declaration. The Association shall not be obligated to spend in any year all the sums collected in such year by way of 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.

Section 4.06. Assessments and Liens; Delinquency. Thirty (30) days after any general or special assessment shall be due and payable, and remains unpaid or otherwise not satisfied, the same shall be and become delinquent and automatically become a lien on the assessed Lot which lien shall so continue until the amount of said charge and assessment, together with all costs, penalties and interest as herein provided, has been fully paid or otherwise satisfied.

Section 4.07. Notice of Delinquency. At any time after any general or special assessment against any Lot has become a lien and delinquent, the Declarant, during the Period of Declarant's Control, or an officer of 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 penalties which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof. Upon payment or other

satisfaction of said assessment, interest, penalties and costs in connection with which notice has been recorded, the Declarant or an office of the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

Section 4.08. 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 at any time within twenty (20) years following the recording of a Notice of Delinquency. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorneys' fees and reimbursements, and such penalties, including fines, for delinquent charges and assessments as shall have been established by the Board. In connection with 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), each Owner to the extent permitted by law, hereby waives 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.

Section 4.09. Subordination of Assessment Lien. 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 first mortgage which has been, or may hereafter be, given in good faith and for value by any bank, savings and loan or other institution in the business of regularly conducting lending on any interest of any Owner covered by this Declaration. Any unpaid assessments shall be deemed to be common expenses collectible from assessments made to all Lots. Nothing contained herein shall release a person or entity from its personal liability for any assessments assessed while such person or entity owns a Lot which becomes delinquent prior to any such foreclosure.

Section 4.10. Liability of Owners. In addition to the covenants and agreements heretofore set forth herein, each Owner, by the acceptance of title to such owner's Lot, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally directly liable for the payment of each general or special assessment levied against such Owner's Lot during the period of such Owner's ownership of a Lot, or a portion thereof.

Section 4.11. Interest on Delinquent Assessments. All assessment charges (general or special) which remain due and unpaid thirty (30) days after the same are due shall thereafter be subject to 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.

Section 4.12. Use of General Assessment Funds. The Association's general a special assessment fund, shall be used for such purposes as the Board or the Declarant, during the Period of Declarant's Control, shall determine necessary and advisable for improving, operating, using, maintaining, repairing and replacing the Common Area and improvements thereon, thereon which shall, include, but are not limited to, expenses incurred in connection with: collecting and disposing of garbage and rubbish within the Common Area; mowing and removing grass or weeds from the Common Area; any community service including publishing a directory of the

membership of said Association; for payment of insurance premiums and management, accounting and legal costs and fees; payment of costs and expenses incurred by the enforcement of this Declaration, the articles of incorporation, bylaws, rules and regulations established hereunder and State, Federal and local laws, rules or regulations; the payment of operating expenses of the Association; and payment of all real property taxes and assessments and costs allocated or assessed to the Common Area, and doing any other thing necessary or advisable in the opinion of the Board for the general welfare and safety of the Owners and/or for any other purpose contemplated herein or within the purposes for which the Association is incorporated.

Section 4.13. Injunction and Specific Performance. Nothing contained in this Declaration shall be deemed to affect or limit the rights of the Declarant during the Period of Declarant's Control, or thereafter the Association, to enforce the provisions hereof by appropriate judicial proceedings or to recover damages, fees and expenses. However, it is hereby declared that it may be impossible to measure accurately in money the damages that will accrue to a Declarant or the Association hereof, its transferees, successors, or assigns, by reason of a violation of, or failure to perform any of the obligations provided by, this Declaration; and therefore, the Declarant or the Association hereof shall be entitled to relief by way of injunction or specific performance, as well as any other relief available at law or in equity, to enforce the provisions hereof.

Section 4.14 Fines. The Declarant, during the Period of Declarant's Control, and thereafter the Board shall have the authority to assess fines for any violation of this Declaration by an Owner or occupant, which fines shall be determined in the discretion of the Declarant or Board, as applicable; provided, a fine may not exceed One Hundred Dollars (\$100.00) 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 or occupant, specifying the violation. If the noncompliant Owner or occupant fails to cure the violation within thirty (30) days following the mailing of such notice by the Board, or if there is a reoccurrence of the violation during such thirty (30) 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 or occupant and its Lot in an amount determined by the Board to be appropriate in its discretion and 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.

Section 4.15. All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner of any of the terms, covenants, restrictions or conditions contained in this Declaration, including, but not limited to, this Article 4, the Declarant during the Period of Declarant's Control, and thereafter the Association shall be entitled to exercise any and all legal and equitable rights and remedies from the consequence of such breach, which rights and remedies shall be cumulative and in addition to any other rights and remedies available at law or equity. Any Owner (other than Declarant) which is in default of any provision in this Declaration shall pay the Declarant or Association, as applicable, for all costs and expenses incurred by Declarant or Association, as applicable, to enforce, or exercise remedies or rights hereunder, including, but not limited to, legal fees and reimbursements.

## ARTICLE 5

### Covenants for Maintenance; Enforcement

Except as otherwise specifically provided in this Declaration, each Owner (other than Declarant; provided it will cause all Lots owned by it to be periodically mowed) shall keep each Lot owned by such Owner, together with the all improvements therein or thereon in good order, condition and repair, including, but not limited to, seeding grass, fertilizing, weed control, mowing of all lawns, removal of diseased or dead trees within a reasonable time, the painting, maintenance, repair and replacement (including the painting or other appropriate exterior care) of all Structures, including, but not limited to, buildings and other improvements, roofs, gutters, downspouts, exterior building surfaces and other exterior improvements, any exterior doors, windows, glass walls and structural items, as well as the fence or wall, if any, driveways and sidewalks appurtenant to such Lot, all in a manner and with such frequency as is consistent with good property management in relation to a quality business park such as will exist in the Lots. Each Owner shall maintain the areas within street right-of-ways adjoining such Owner's Lot, by the seeding of grass, fertilizing, weed control, regular mowing thereof, to the same condition as such Owner's Lot is required to be maintained hereunder. Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's Lot is required to be maintained hereunder. Trees on each Lot and on the street right-of-way adjoining a Lot must be trimmed by the Owner of the applicable Lot so that the tree branches do not extend over any adjoining curb, street or any entrance into such street.

If in the opinion of the Declarant, during the Period of Declarant's Control, or the Board, any Owner fails to perform such duties, or otherwise breaches such Owner's obligations as specified in this Declaration, the Association, upon approval by the Declarant, during the Period of Declarant's Control, or the Board and after thirty (30) days written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available hereunder or at law or equity), through its agents and employees, to enter upon the Lot(s) and to seed, water, fertilize, mow, remove, repair, maintain, repaint, remove, and restore such Lot, or right-of-way areas, or such improvements, or otherwise bring such Lot(s) or such improvements into conformity herewith, and the actual cost thereof (hereinafter sometimes called the "Compliance Charge") shall be a binding direct obligation of such Owner and a lien upon the applicable Lot in the following manner: The Association shall record an Affidavit of Nonpayment of Compliance Charge in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (a) the legal description of the Lot upon which the lien is claimed, (b) the name(s) of the Owner(s) of the Lot as last known to the Association, and (c) the amount of the Compliance Charge which is unpaid. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of the Affidavit of Nonpayment of Compliance Charge. In any action to foreclose any such lien, the Association shall be entitled to recover its actual costs, including reasonable attorney's fees and reimbursements, and such penalties for delinquent charges as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the aforesaid Affidavit and such lien shall be superior to all other

charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The Compliance Charge shall accrue interest at the rate established from time to time by the Board, but in no event more than fifteen percent (15%) per annum or such lesser rate as permitted by law.

## ARTICLE 6

### Architectural Control; Guidelines

Section 6.01. Approval Required. Except as provided below, no Structure, projection from a Structure, or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein or thereto be made, until the plans, specifications and the exterior materials showing the nature, kind, shape, height, materials, colors and location of the same, together with such other information as may be requested by the DRC, and the Lot specific drainage plan referenced in Section 7.08 below, shall have been submitted to and approved in writing by the design review committee (hereafter the "DRC"), as to (a) harmony of external design and location in relation to and effect upon surrounding Structures, topography and the overall community design of the Property; (b) the character and color of the exterior materials; (c) the quality of the exterior workmanship; (d) the location thereof on the Lot; and (e) such other circumstances, factors and considerations as the DRC may deem relevant. In the event the DRC fails to approve or disapprove the proposed plans, specifications and materials within thirty (30) days after the complete plan, specifications and materials, including a drainage plan as required by Section 7.08 hereof, have been submitted to and received by it, approval will not be required, and this Article will be deemed to have been fully complied with. After the date the Declarant has specifically relinquished its right to designate the members of the DRC under Section 6.05 below, the applicant may appeal an adverse decision to the Board, which may reverse or modify such decision by a two-thirds (2/3) vote of those directors present and voting at a meeting at which a quorum, if any is required under the bylaws, is present. The Board shall establish the schedule for disposition of such appeal upon written notice to the Owner taking appeal. The DRC may deny approval for any proposed Structure if the Owner is delinquent in payment of any assessments due hereunder. The provisions of this Section and Article 6 are not applicable to any Lots at the time the same are owned by Declarant. It is recognized that good quality metal buildings (including wood framed buildings with a metal exterior) shall be permitted for installation on a Lot, though the DRC's approval shall be required for the specific type of building, the color thereof and the position it is placed on the Lot.

Section 6.02. Form of Plans and Specifications. Any Owner seeking approval of the DRC shall, at its expense, submit plans, specifications and other materials in such form and shall contain such information as may be required by the DRC, but in any event shall include (a) a site plan of the Lot or Lots showing the nature, exterior color scheme, textures, kind, shape, height, elevations, materials, and location with respect to the particular Lot or Lots (including proposed front, rear, and side set-backs) of all Structures and access into the Lot, (b) the location thereof with reference to Structures on adjoining portions of the Property, (c) the number and location of

all parking spaces and driveways on the Lot or Lots, (d) a Lot specific drainage plan prepared by an engineering firm designated by Declarant in accordance with the then current master grading and drainage plan applicable to the Lot or Lots as referenced in Section 7.08 below, (e) the trash dumpster location, (f) types of screening, fencing or walls to be constructed or installed, (g) a landscape plan, (h) a lighting plan and (i) proposed signage, including the size, shape, color, location and materials.

Section 6.03. Removal and Alteration of Structures, Liens.

A. If any Structure shall be constructed, altered, erected, placed, or maintained upon any Lot, or any new use of a Structure is commenced on any Lot, otherwise than in accordance with plans, specifications, materials and other matters approved by the DRC pursuant to the provisions of this Article, such construction, alteration, erection, placement, maintenance, or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein, and, upon written notice from the DRC, any such Structure so altered, erected, placed, maintained or used upon any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated by the Owner(s) of such Lot within a reasonable period of time established by the DRC, so as to extinguish such violation.

B. If thirty (30) days after notice of such a violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, and continued the pursuit thereof with diligence, the Association or the DRC shall have the right, through their contractors, agents and employees, to enter upon such Lot, and to take such steps as may be necessary to extinguish such violation, and one hundred twenty-five percent (125%) of the cost of such removal and alteration shall be a binding, direct obligation of such Owner for the payment to the Association and, if not paid in full by such Owner on demand by the Board, the cost shall mature into a lien upon the Lot(s) in question in the following manner: The Association or the DRC shall record an Affidavit of Nonpayment of Removal or Alteration Charges in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (i) the legal description of the property upon which the lien is claimed, (ii) the name(s) of the Owner(s) of said Lot as last known to the Board, and (iii) the amount of the removal and alteration charges which are unpaid. The lien shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot whether arising for imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of an Affidavit of Nonpayment of Removal or Alteration Charges. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The costs incurred by the Association shall accrue



interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or such lesser rate as permitted by law.

C. In the event a lien is created pursuant to this Section and thereafter the Affidavit of Nonpayment of Removal or Alteration Charges, plus accrued interest and penalties and other costs and expenses shall be fully paid, the Association or the DRC shall, within twenty (20) business days following payment, file with the Register of Deeds of Sedgwick County, Kansas, an Affidavit of Payment of Removal or Alteration Charges, which affidavit shall (i) refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied, (ii) state the legal description of the Lot affected, and (iii) state the name(s) of the Owner(s) of the Lot.

Section 6.04. Right of Inspection. A representative of the Declarant, during the Period of Declarant's Control, Board or DRC or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot, and the exterior of any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, repair, construction, or alteration of Structures thereon are in compliance with the provisions hereof, and neither the DRC, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 6.05. Membership of DRC. The original member(s) of the DRC shall be one or more persons appointed by Declarant. Upon the death or resignation of any member of the DRC, or the removal of a member thereof by Declarant, Declarant shall appoint a successor, until such time as Declarant has specifically relinquished its appointment rights hereunder as hereinafter provided. The act of a majority of the DRC committee shall be binding and the majority of the committee may designate a representative to act for it. At such time as Declarant desires to do so, Declarant shall specifically relinquish its appurtenant rights, or any portion thereof, under this Section to the Board by advising the Association in writing of its intent to do so. In any event, Declarant shall relinquish its rights under this Section at the time when the construction of buildings on all of the Lots have been completed. Following the date the rights of the Declarant are relinquished under this Section, the Board shall appoint the members of the DRC.

Section 6.06. Disclaimer as to DRC Approval. Plans, specifications or any other materials are not reviewed for operability of systems, mechanical, plumbing, electrical, engineering, or structural design, or quality of materials, and by approving such plans and specifications neither the Declarant, Board, DRC, the members thereof, nor the Association assumes, or shall have, any liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the DRC, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans, specifications or other materials to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans, specifications or other matters. Every person who submits plans, specifications or other matters and every Owner agrees that it will not bring any action or suit against Declarant, the Association, the DRC, the Board, or the officers, directors, members, employees, and agents

of any of them to recover any such damages and hereby releases, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

Section 6.07. No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Structure until the Structure is completed, in which case it may be unreasonable to require changes to the improvements involved, but the DRC may refuse to approve similar proposals in the future. Approval of applications or plans, specifications or other materials for any Structure, whether completed or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

Section 6.08. Variances. The DRC may authorize variances from compliance with any of the design development guidelines, if any, and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing, or (b) prevent the DRC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain the approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

## ARTICLE 7

### **General Covenants, Restrictions and Disclosures**

Section 7.01. Structures. No previously approved Structure located on any Lot shall be used for any purpose other than that for which it was originally designed, without prior approval of the Board.

Section 7.02. Division of Lots. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise except by the Declarant during the Period of Declarant's Control, or thereafter without prior approval of the Board.

Section 7.03. Off-street Parking Requirement. No parking shall be permitted on any street or at any place other than on the paved parking spaces located on a Lot. Each Owner and occupant shall be responsible for compliance with the foregoing by its contractors, employees and visitors. Adequate off-street parking shall be provided by each Owner and tenant for customers and visitors. All off-street parking and access drives and loading areas shall be paved and properly graded to assure proper drainage.

Section 7.04. Signs. No sign or other advertising device of any nature shall be placed upon any Lot except a sign or device may be placed on a Lot which is (a) installed by Declarant, (b) approved by the Declarant, during the Period of Declarant's Control, or thereafter the DRC, and (c) for the usual and customary real estate broker signs advertising a Lot as "for sale" or "sold." All signs shall conform to the sign standards for the Property as established from time to time, including, but not limited to, limitations on the size thereof and to all applicable laws, city ordinances, government regulations, plats and zoning overlay restrictions which are applicable from time to time. The Declarant, during the Period of Declarant's Control, or thereafter the Board may remove non-conforming signs upon three (3) days notice to the Owner, such removal to be at the cost of said Owner.

Section 7.05. Rules; Laws; Lease Provision Regarding Compliance. Each Owner, its tenants, occupants, guests and invitees, shall obey and comply strictly with this Declaration and with all applicable public laws, ordinances, rules and regulations, and all rules and regulations now or hereafter promulgated, as provided for in this Declaration. Any lease regarding a Lot or the improvements thereon must contain provisions requiring the tenant's compliance with this Declaration.

Section 7.06. Lot Use.

A. Except as otherwise authorized in writing by the Declarant, during the Period of Declarant's Control, or thereafter the Board, no Lot (or portion thereof), or improvements on a Lot (or a portion thereof), shall be used or operated for any of the following purposes: cemetery; public or private nuisance; a massage parlor (provided such prohibition shall not prohibit or restrict massages in a legitimate, non-sexually oriented business); "sex" shops; "adult" theater; mobile home or trailer court; junkyard or stockyard, landfill, garbage dump or area for dumping, disposing, incineration or reduction of garbage; food or meat processing facility; fuel processing or refinement; asphalt or concrete plant; correctional facility; group home except as permitted in subsection B below; mining or quarrying operation; oil, gas or other mineral exploration or production; rock crushing; wrecking/salvage yard; or grain storage or feed lot.

B. Except as provided in subsection A of this Section 7.06, Lots (or any portion thereof), or improvements on a Lot (or a portion thereof) may only be used in compliance with the plat and zoning regulations applicable to such Lots and shall further be limited to the following types of uses and activities: manufacturing, processing, storage, wholesale, office, laboratory, professional, research, development, retail, restaurant, warehouse and/or distribution facility, and a school for children and youth, which school may include a daycare home or care center for children or youth.

C. No Owner shall install, or shall permit anyone to install, in or about the Lot any exterior amplification or similar devices or any advertising medium which may be heard or experienced outside the Lot, such as, but not limited to, flashing lights, search lights, loudspeakers, phonographs, television or radio broadcasts; provided, however, that with the prior written authorization of the Declarant or, following the Period of

Declarant's Control, the Board, may in some circumstances allow the uses of the foregoing outside the building(s) on such Lot but only to such extent as is permitted by the Declarant or Board, as applicable.

D. Specifically, except as otherwise authorized in writing by the Declarant during the Period of Declarant's Control, and or thereafter the Board, no Lot shall be used or operated with noise or sound that is objectionable outside such Lot due to intermittence, beat, frequency, shrillness or loudness, or in such a manner to emit an excessive quantity of dust, dirt, ash or other debris.

Section 7.07. Requirements Concerning Landscaping. Within ninety (90) days after occupancy of a building on a Lot, the Owner thereof shall provide a landscaping plan to the DRC for its review and obtain its written approval thereof, and after obtaining such approval promptly plant and install the landscaping in a good and workmanlike manner, unless it is not seasonal to do so within such period, in which event the planting and installation shall occur as soon as reasonably possible in the next following planting season. Owners shall be permitted to install natural style, low water and drought resistant landscaping approved by the DRC.

Section 7.08. Drainage. Declarant has caused its engineering firm to prepare a master drainage and grading plan for the Lots, which plan may be revised by such firm from time to time, and each Owner shall strictly comply with the same. No Owner shall place or install any Structures, including, but not limited to, signs, trees, shrubbery, landscaping or retaining walls in any drainage easement or channel.

Prior to the commencement of construction of the initial improvements and landscaping on a Lot, the Owner, or Owner's building contractor, shall hire the subdivision's engineering firm at its expense to prepare a Lot Grading Plan for the Lot. Each Owner shall comply with the Lot specific drainage plan which is prepared by such firm. Upon request, the Owner, or Owner's building contractor, shall provide a copy thereof to the Association.

The Declarant, during the Period of Declarant's Control or the DRC or persons designated by the DRC (including the management company engaged by the Association) shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans and the Lot specific grading and drainage plan which each Owner is to have prepared by the subdivision's engineering firm as referred to above. Declarant, during the Period of Declarant's Control, or the DRC may notify an Owner if such Owner's Lot is not in such compliance. If thirty (30) days after the notice of such violation, or such additional time as may be specified by the Declarant, DRC, the Owner of such Lot has not taken reasonable steps to correct the same, the Declarant, during the Period of Declarant's Control, Board on behalf of the DRC shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Declarant or the Association for the actual costs of such compliance and pay the Association a fee equal to fifteen percent (15%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) business days following demand

thereof, the Board may thereafter establish a special assessment applicable to such Owner and its Lot for the costs thereof and enforce the same as provided in Article 4 hereof. The rights of the Declarant, DRC, the Board and the Association hereunder are cumulative and in addition to any rights and remedies otherwise available at law or equity.

Section 7.09. No Excavations. No excavations, except such as are necessary for the construction of a building or other Structure, shall be permitted on any Lot without written permission of the DRC.

Section 7.10. Prefabricated or Used Buildings. No prefabricated, used, secondhand or previously erected building or Structure of any kind can be moved or placed, either in sections or as a whole, upon any Lot without the prior written approval of the DRC.

Section 7.11. View. Subject to any specific provisions in this Declaration to the contrary, no Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction, installation or location of any Structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

Section 7.12. Erosion; Water Pollution Control Permit and Related Matters. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a Stormwater Pollution Prevention Ordinance, the Kansas Water Pollution Control General Permit And Authorization To Discharge Stormwater Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Such permits, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on a Lot, including, but not limited to, site work such as clearing, excavating, and grading the Lot, in order to eliminate or substantially reduce stormwater discharge, the discharge of pollutants and water quality violations. Each Owner agrees to conduct activities, including construction activities, on its Lot strictly in accordance with this Declaration, all laws, rules, regulations, and ordinances now or hereafter in effect, including, but not limited to those referenced above, and shall indemnify and defend Declarant and the Association from any consequences of such Owner's, or its contractors' or subcontractors', failure to so comply, including but not limited to all actual damages, liabilities, fines, penalties and costs and expenses (including reasonable legal fees and expenses).

Section 7.13. Safety and Security. Each Owner and occupant of a Lot, and the respective tenants, occupants, guests and invitees thereof, shall be responsible for their own personal safety and the security of their property.

Section 7.14. Responsibility for Repair and Replacement. Each Owner further covenants and agrees that in the event of damage to or destruction of Structures on its Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original

construction or such other plans and specifications as are approved in accordance with Article 6. Alternately, the Owner shall clear the Lot and maintain it in a neat and attractive landscaped condition consistent with the requirements of this Declaration. The Owner shall pay any costs to clear and maintain the Lot which are not covered by insurance proceeds.

Section 7.15. Utility Connections and Mechanical Equipment. All utility connections, including all electrical and telephone connections and installations of wires to buildings, shall be made underground from the nearest available power source. No transformer elevated above ground level, electric, gas, or other exterior elevated meter of any type, or other apparatus shall be located on any power pole or hung on the outside of any building, but the same shall be placed on or below the surface of the Property and where placed on the surface shall be adequately screened and fenced, and all such installations shall be subject to prior written approval of the DRC. All mechanical equipment including, but not limited to, pipes, heating and air conditioning equipment, ducts, and valves shall be adequately screened from view, and the installation thereof shall be subject to prior written approval of the DRC.

Section 7.16. Fences. All fencing shall be approved by the DRC prior to installation or construction.

Section 7.17. Use of Hazardous Material. Each Owner shall only cause or permit any Hazardous Material (as hereafter defined) to be brought upon, kept, or used in or about such Owner's Lot by Owner, its tenant, or the agents, employees, contractors, invitees or licensees of such Owner or tenant, as is necessary or useful to the business conducted on such Lot and the same will be used, kept, and stored in a manner that strictly complies with all laws, rules, regulations, decrees and orders regulating any such Hazardous Material. If Owner, or any tenant, agent, employee, contractor thereof or any of its licensees or invitees, breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on an Owner's Lot is caused or permitted by such Owner, or any of its tenants, agents, employees, contractors, licensees or invitees, results, or is alleged by a governmental or quasi-governmental agency, to have resulted in, contamination of the Property, then Owner shall indemnify, defend, and hold Declarant, and the members and managers of Declarant, the Association, the DRC and each Owner, and the tenants or occupants under the authority of such other Owners, harmless from any and all actual claims, judgments, damages, penalties, fines, costs, liabilities, or losses, sums paid in settlement of claims, reasonable attorneys' fees, consultant fees, and expert fees, costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of such Hazardous Material, which arise as a result of such contamination. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste, including, but not limited to, those substances, materials, and waste identified under any federal, state or local laws, ordinances, decrees, regulations or court decisions, including, but not limited to, the Comprehensive Environmental Response Compensation Liability Act of 1980, the Resource Conservation and Recovery Act, and the Hazardous Material Transportation Act.

Section 7.18. Rules and Regulations; Nuisance. Each Owner shall obey and comply with all applicable public laws, ordinances, rules and regulations, and all rules and regulations now or hereafter promulgated by the Declarant, during the Period of Declarant's Control, or thereafter the Board. No activity which may be or become a nuisance to the neighborhood shall be carried on upon the Property.

Section 7.19. Damage to Common Area. 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 or the improvements thereon, or the Lot, or improvements thereon, of any other Owner.

Section 7.20. Duty of Owners to Insure. Each Owner other than the Declarant shall obtain and maintain so long as it is an Owner the following types of insurance: "All risk" fire and property insurance in an amount as near as possible to the full replacement cost without deduction for depreciation or co-insurance of all of the structural portions the improvements owned by such Owner on the Property, and "all risk" coverage insurance on such Owner's personal property and fixtures within all building and improvement located on his portion of the Property.

In addition, each Owner, other than the Declarant, shall obtain and maintain so long as it is an Owner a comprehensive general liability insurance insuring against liabilities for damage to person or property occurring upon his portion of the Property and in any manner arising out of the conditions or use of such Owner's portion of the Property or the operations of the insured. Such insurance shall be in an amount not less than one million dollars (\$1,000,000.00) for personal injury and property damage arising out of a single occurrence, or in such other minimum amount as the Board may determine from time to time.

All insurance required to be obtained and maintained by an Owner pursuant to this Section 7.20 shall: (a) contain a waiver by the insurer of any claim for subrogation against the Association, the Board, the officers of the Association and all other Owners or mortgagees; (b) provide that the coverage is primary and that any coverage maintained by the Association shall be in excess thereto; (c) provide that each such policy cannot be canceled, modified or terminated without thirty (30) days prior written notice to the Association; and (d) with respect to public liability insurance, include as insured parties, the Association, the Board, and the officers and agents of the Association. Each Owner shall, within three (3) business days following the request therefor, furnish the Association's current certificate or policy evidencing such insurance.

## ARTICLE 8

### The Association

Section 8.01. Powers and Duties.

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

not limited to, those enumerated in this Article 8. The initial Board shall consist of three (3) directors.

B. Declarant may carry out all of the duties and powers herein delegated to the Association and the Board (including, but not limited to, designating the members and officers of the Board and the members of any Association committee) during the Period of Declarant's Control; provided, however, that the Declarant may, at its option, at any earlier time, partially or wholly relinquish any part of such duties and powers to the Association or the Board by a written instrument delivered to the Board. In the event of a relinquishment of a portion of Declarant's powers and duties by the Declarant to the Association or the Board, the Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate fully in the transition of the powers and duties hereunder. No act or omission shall be deemed a relinquishment of Declarant's rights under this subsection other than in accordance with this subsection. Relinquishment of all, or any, of its rights under this subsection, shall not constitute a relinquishment of Declarant's rights to designate members of the DRC under Section 6.05 above.

C. The Association shall maintain such insurance on the Common Area and facilities thereon as it deems necessary and advisable.

D. The Board shall have the right to create and establish financial reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder.

E. The Board shall have the right to adopt such policies, rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Common Area.

F. The Board shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area and caring for, watering, spraying, protecting, and replanting trees, shrubbery, grass and sod within the Common Area and within any public road rights-of-way adjacent to the Common Area.

G. The Board, on behalf of the Association, shall have the right to construct, maintain, repair and replace any walls or fencing within the Common Area; maintain, repair and replace sprinkler systems and other improvements or features now existing or hereafter erected, created or established within the Common Area; and clean and maintain any ponds within the Common Area.

H. The Association shall have the right to erect, maintain, repair and replace signage as deemed appropriate and necessary by the Board within the Common Area.



I. The Association shall pay the taxes and assessments applicable to the Common Area.

J. The Board shall have the power to levy and collect the assessments and charges provided for in this Declaration and to enforce the liens thereby created in the manner herein provided.

K. As referenced in Article 9, the Association, through the Board, may enforce violations of this Declaration. The decision to have the Association pursue enforcement action in any particular case shall be left to the Boards' discretion. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction or rule being enforced is, or may be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interest, based upon hardship, expense, or other criteria to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

L. The Association may engage a management company to manage all, or any portion of, the operations of the Association.

Section 8.02. Operations and Expenses. The Association may establish committees and may engage a property manager, engineers, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The actual expenses of committees, the manager and the fees of consultants shall be established and paid for by the Association. The Association shall pay for all other actual expenses necessary or incidental to the conduct or carrying on of its business concerning the Property.

## **ARTICLE 9**

### **Enforcement**

The Association and Declarant, during the Period of Declarant's Control, shall have the right to enforce, by any proceeding at law or in equity (including, but not limited to, obtaining an injunction, whether prohibitive or mandatory), all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the articles of incorporation, bylaws or applicable State, Federal or local laws, rules or regulations insofar as the same are for the benefit of the Association or Declarant, respectively. The Association and Declarant shall have the right to include in their claim for relief a reasonable sum to reimburse them for their reasonable attorneys' fees and any other expenses actually and reasonably incurred in enforcing their rights hereunder.

## **ARTICLE 10**

### **Additional Land**

Declarant may, from time to time, during the twenty-five (25) year period following the date hereof, annex additional contiguous land to the Property, and thereby subject the same to the terms, provisions and conditions of this Declaration (as such provisions may be changed, altered, supplemented, deleted or modified solely as to the annexed land specifically by the document annexing such additional land), by the execution and filing for recordation with the Register of Deeds of the County in which the Property is located, of an instrument expressly stating an intention to so annex and describing such additional property to be so annexed. During the twenty-five (25) year period commencing with the date of the recordation of this Declaration, Declarant, its successors and assigns, may annex such additional real property in its absolute discretion. From and after the expiration of such twenty-five (25) year period, such additional land may be annexed; provided that such annexation is approved by two-thirds (2/3) of the votes of the Members in attendance, in person or by proxy, at a special or annual meeting of the Members.

## **ARTICLE 11**

### **Notice of Possible Special Assessments**

Notice is hereby given to each purchaser of a Lot that special assessments will be spread by the City of Kechi, Kansas, or other government bodies, to Lots in the future, due to the installation of streets, sanitary and storm sewers, sidewalks, etc. Each Owner must independently obtain such information as such Owner desires or deems sufficient concerning the amount of special assessments which currently, and in the future will, affect such Owner's Lot.

## ARTICLE 12

### Assignment; Limitation Of Liability; Easements

Section 12.01. Assignment. No Owner (except Declarant) shall have the right to assign, independently of a transfer or conveyance of a Lot, any rights or obligations created by or arising under this Declaration and any such attempt at assignment shall be absolutely null and void.

Section 12.02. Limitation of Liability. Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Declarant (including without limitation any assignee of the interest of Declarant hereunder) nor any shareholder, owner or member of Declarant (or any such assignee) or any director, officer, employee, or consultant of Declarant thereof shall have any personal liability to the Association or any Owner or other person or entity, arising under, in connection with, or resulting from (including, without limitation) any action or failure to act with respect to this Declaration, the articles of incorporation or bylaws of the Association, or rules of the Association, the design guidelines of the DRC, or for any action taken, or not taken, pursuant to authority granted Declarant thereunder or with respect thereto. To the fullest extent permitted by law, neither the Declarant, the Association, their respective shareholders, members (or any assignee), the officers, employees, consultants or directors of the Association, any DRC member, nor any other members of committees of the Association shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Declarant or the Association, any member, director, officer, consultant or employee thereof, or member of any such committee reasonably believed within the scope of its duties. The foregoing shall not include any damage, loss or prejudice suffered on account of the gross negligence or willful misconduct of Declarant, the Association, their respective shareholders, members (or any assignee), the officers, employees, consultants or directors of the Association, any DRC member, nor any other members of committees of the Association.

Section 12.03. Easements in Favor of Declarant. Declarant, or its marketing company, may have installed a sign advertising the development, or the sale of Lots and/or buildings, on the Common Area prior to the sale of such Lot or transfer of the Common Area to the Association. Declarant, its successors and assigns, for itself, its affiliates, and marketing company, hereby retain a perpetual nonexclusive easement for the placement, and replacement, of any such advertising sign on the Common Area until all Lots have been sold by Declarant or its successors and assigns.

Section 12.04. Easements to Additional Land. Declarant hereby reserves for itself and its affiliates and designees, and its successors, assigns, and mortgagees, a perpetual, nonexclusive easement over the Common Area for the purposes of access, and development of additional land, whether or not such land is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for connecting and installing any and all utilities to such other land. Declarant or such affiliate, successor or assign shall restore any damage to the Common Area resulting from the use of such easement.

## ARTICLE 13

### Miscellaneous

Section 13.01. Provisions Binding on Grantees. The Association and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association and Declarant provided for in this Declaration.

Section 13.02. Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings, Lot or Common Area; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties. In the event there are inconsistencies or conflicts between this Declaration, the articles of incorporation or bylaws of the Association, or the Design Development Guidelines, if any, the most stringent shall prevail.

Section 13.03. Construction and Validity of Restrictions; Severability; Perpetuities. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired and shall remain in full force and effect. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provision of this Declaration.

Section 13.04. Assignment of Powers. Any and all rights and powers of Declarant provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned or conveyed by Declarant to any third party. The Declarant's assignee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein.

Section 13.05. Waiver and Exceptions. The failure by the Association, Declarant, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to the Lots or any part thereof is established hereby, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge. This non-waiver provision may only be waived by a written instrument signed by the waiving party or parties.

Section 13.06. Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

Section 13.07. Singular and Plural, Masculine and Feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

Section 13.08. Successors-in-Interest. Reference herein to either the Association or Declarant shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

Section 13.09. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant, and the Owners, their respective legal representatives, heirs, successors and assigns, for a term of fifty (50) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of five (5) years each, unless an instrument, signed by Owners of not less than seventy-five percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

Section 13.10. Amendments. Amendments, including restatements, waivers, modifications, alterations, deletions, supplements, changes or additions to this Declaration of any nature, whether or not contemplated hereby, may be made by Declarant, or its successors and assigns, in its sole discretion, during the Period of Declarant's Control. Following the Period of Declarant's Control, any provision contained in this Declaration may be restated, amended, altered, supplemented, waived, modified, deleted, changed, repealed, or additional provisions added to this Declaration, as follows:

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

B. *Resolution*. A resolution adopting a proposed amendment may be proposed by the Board or Declarant. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Members casting not less than sixty percent (60%) of the aggregate number of votes cast in person or by proxy at such meeting. Such votes may be cast in person or by proxy as provided for herein and in the bylaws of the Association.

C. *Recording*. A copy of each amendment provided for in this Section shall be certified by the Board as having been duly adopted and shall be effective when files of record in the office of the Register of Deeds of Sedgwick County, Kansas.

D. *Declarant's Consent.* Notwithstanding the foregoing, so long as a building has not been completed on each Lot, any such amendment shall require the written consent of Declarant in order to be effective.

A copy of each amendment provided for in this Section shall be filed of record in the Register of Deeds for the County in which the Property is located. With respect to amendments, following the date the Declarant has fully relinquished its powers and duties to the Association, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

Section 13.11. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

Section 13.12. No Liability for Preparation of Declaration. Declarant has, using good faith, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a or possession of a Structure, acknowledges that Declarant shall have no such liability.

Section 13.13. Declarant's Activities. The Declarant specifically reserves the right to carry on its business within the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices and other facilities necessarily convenient for the business of Declarant. Additionally, any Lot owned by Declarant may be used for planting, growing and harvesting crops.

Section 13.14. No Consequential, Punitive or Special Damages. To the extent allowed by law and equity, neither the Declarant (or any members or shareholders thereof, or the managers, officers or employees thereof) nor the Association shall have any liability hereunder to any Owner, former Owner, prospective Owner, occupant, tenant, invitee or licensee for consequential, punitive, or special damages in any event.

Section 13.15. No Termination for Breach. Notwithstanding any provision herein to the contrary, no breach of this Declaration by any person or entity shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration.

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

Declarant:

Alley Investments, L.L.C., a Kansas limited liability company

By: K.C. "Buck" Alley  
K.C. "Buck" Alley, Manager

STATE OF KANSAS            )  
  )ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this 3<sup>rd</sup> day of March, 2021, before me a Notary Public in and for the County and State aforesaid, personally appeared K.C. "Buck" Alley, Manager of Alley Investments, L.L.C., a Kansas limited liability company, personally known to me to be the same person who executed as such Manager, the above and foregoing instrument in writing on behalf of said limited liability company and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

Lane D. Alley  
NOTARY PUBLIC

My Appointment Expires: 12/17/21

