

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

(Hanscom-Tappan Addition & Hanscom-Tappan Addition 2nd)

THIS DECLARATION ("Declaration") is made as of the 1st day of December, 2005 (the "Effective Date"), by Parnell Investors, LLC, a Kansas limited liability company (referred to in this Declaration as "Declarant").

RECITALS

1. This Declaration is made with respect to that certain real property located in Douglas County, Kansas (the "Real Estate"), described in Exhibit A attached to this Declaration and, by reference, made a part of this Declaration, and Declarant is the legal and/or equitable owner of the Real Estate. Notwithstanding the foregoing, in the event the real property legally described as Tract 'D', Block Two of the Final Plat of Hanscom-Tappan Addition, a subdivision in the City of Lawrence, Douglas County, Kansas is subsequently conveyed in fee simple to the City of Lawrence, Kansas, whether by Declarant, the Association, or otherwise, this Declaration shall cease to apply with respect to said Tract 'D' and Tract 'D' shall not be included within the definition of Real Estate.
2. Declarant desires to place certain covenants, conditions, restrictions, easements, charges and liens upon the Real Estate, for the benefit of Declarant and its successors, grantees and assigns, and to protect the value and desirability of the Real Estate.
3. Declarant hereby agrees that the Real Estate shall be subject to the protective covenants, conditions, restrictions, reservations, liens and charges set forth in this Declaration.

DECLARATION

NOW, THEREFORE, Declarant declares that the Real Estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens described in this Declaration, for the purposes of (i) enhancing and protecting the value, desirability and attractiveness of the Real Estate, (ii) preserving the amenities and maintaining the same located on the Real Estate, and (iii) promoting safety to life, health and property in the area. These easements, covenants, restrictions and conditions shall run with the Real Estate and shall be binding upon all parties having or acquiring any right, title or interest in the Real Estate, or any part thereof, and shall inure to the benefit of each Owner thereof.

**ARTICLE I
DEFINITIONS**

1. "Articles of Incorporation" shall mean the Articles of Incorporation filed with the Kansas Secretary of State to incorporate the Association, as amended.
2. "Association" shall mean and refer to Hanscom-Tappan Addition, Inc., a not-for-profit corporation, formed or to be formed pursuant to the laws of the State of Kansas.
3. "Bylaws" shall mean the bylaws of the Association, as amended.
4. "Common Area" shall mean that part of the Real Estate and all improvements located thereon owned, operated, and/or maintained by the Association for the common use and enjoyment of the residents of the Hanscom-Tappan Addition, and shall include the following:
 - (a) All real estate owned in fee simple by the Association evidenced by a deed or deeds to the Association, recorded in the office of the Register of Deeds of Douglas County,

Kansas, including Tract 'A' and Tract 'C', Block One, of the Final Plat of Hanscom-Tappan Addition, a subdivision in the City of Lawrence, Douglas County, Kansas; Tract 'A', Block One, of the Final Plat of Hanscom-Tappan Addition, 2nd Plat, a subdivision in the City of Lawrence, Douglas County, Kansas; and for so long as owned by the Declarant or the Association, Tract 'D', Block Two of the Final Plat of Hanscom-Tappan Addition, a subdivision in the City of Lawrence, Douglas County, Kansas;

(b) Any structures, trees, landscaping, lighting equipment, playground equipment, shelters, area marker or markers, community mailboxes, or other improvements owned, operated, and/or maintained by the Association pursuant to this Declaration and located upon the Real Estate;

(c) All easements, rights, and appurtenances belonging thereto necessary to the existence, maintenance, and safety of the Lots and the Common Area;

(d) All personal property owned by the Association, if any, intended for use by the Association in the exercise of its powers as set forth in this Declaration; and

(e) All that portion of the Real Estate owned and/or operated by the Association as common area, open space, park land, stormwater drainage, stormwater detention areas, and/or the pedestrian easements, as shown on the Plat or the Development Plan that are not otherwise maintained by the City of Lawrence, Kansas.

5. **"Common Expenses"** shall mean and include the costs incurred by the Association in conducting activities in accordance with this Declaration, the Articles, or the Bylaws. Common Expenses shall include, but not be strictly limited to, the following:

(a) Expenses of administration, maintenance, management operation, repair, and replacement of all areas and facilities which are owned, maintained and/or operated by the Association;

(b) insurance expenses; taxes; and expenses incurred in the maintenance, operation, repair, and replacement of the Common Areas and the portions of the Real Estate to be maintained by the Association;

(c) the cost of management and administration of the Association, including but not limited to, compensation paid by the Association to managers, accountants, attorneys, and other professionals and employees;

(d) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Association; and

(e) Other expenses declared Common Expenses by the Association in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

6. **"Declarant"** shall mean and refer to the Declarant described above.

7. **"Development Plan"** shall mean and refer to the Hanscom-Tappan PRD Final Development Plan, recorded in the Office of the Register of Deeds of Douglas County, Kansas, on April 5, 2005, in Plat Book 17, Page 841, as amended and supplemented by Hanscom-Tappan 2nd PRD Final Development Plan, recorded in the Office of the Register of Deeds of Douglas County, Kansas, on June 30, 2005, in Plat Book 17, Page 890, as amended or modified in accordance with procedures of the City of Lawrence, Kansas from time to time.

8. "Lot" shall mean and refer to any subdivision of the Real Estate pursuant to the Plat. No portion of the Common Area owned by the Association shall be considered a Lot.
9. "Member" shall mean and refer to each Owner as provided herein.
10. "Owner" shall mean and refer to the record owner or owners, whether one or more persons or entities, of the fee simple title to a Lot, including a contract purchaser of a Lot who has complied with the provisions of this Declaration. The term "Owner" shall not mean any mortgagee unless and until such mortgagee has acquired fee simple title to a Lot pursuant to foreclosure or any proceeding in lieu of foreclosure.
11. "Person(s)" shall mean a natural individual(s), corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.
12. "Plat" shall mean and refer to the Final Plat of Hanscom-Tappan Addition, a Subdivision in the City of Lawrence, Douglas County, Kansas, recorded in the Office of the Register of Deeds of Douglas County, Kansas, on April 5, 2005, in Plat Book 17, Page 840, together with the Final Plat of Hanscom-Tappan Addition 2nd Plat, a Subdivision in the City of Lawrence, Douglas County, Kansas, recorded in the Office of the Register of Deeds of Douglas County, Kansas, on June 16, 2005, in Plat Book 17, Page 884.
13. "Real Estate" shall mean and refer to the land described in Exhibit A. Notwithstanding the foregoing, in the event the real property legally described as Tract 'D', Block Two of the Final Plat of Hanscom-Tappan Addition, a subdivision in the City of Lawrence, Douglas County, Kansas is subsequently conveyed in fee simple to the City of Lawrence, Kansas, whether by Declarant, the Association, or otherwise, this Declaration shall cease to apply with respect to said Tract 'D' and Tract 'D' shall not be included within the definition of Real Estate.
14. "Residential Unit" shall mean and refer to one single-family, detached residential building located on a single Lot.
15. "Rules and Regulations" shall mean and refer to the rules and regulations governing the use of Real Estate and Common Areas, and the maintenance of the Lots and Residential Units in Hanscom-Tappan Addition, which rules and regulations shall be consistent with the rights and duties established by this Declaration, that the Association may adopt and amend from time to time.
16. "Hanscom-Tappan Addition" shall mean and refer to the Real Estate as set forth in the Plat and the Development Plan.
17. "Hanscom-Tappan Addition Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in Hanscom-Tappan Addition. That standard may be specifically determined and set forth by the Architectural Control Committee.
18. Other terms may be defined in specific provisions contained in this Declaration and shall have the meaning assigned in such definition.

ARTICLE II
PROPERTY SUBJECT TO DECLARATION

1. **Existing Property.** The Real Estate shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.
2. **Merger or Consolidation.** Upon a merger or consolidation of the Association with another not-for-profit corporation (such as a homeowners' association formed to operate and maintain adjacent real estate which might at a future time be developed as a compatible and harmonious residential development) the Association's properties, rights, and obligations may by operation of law be transferred to another surviving or

consolidated not-for-profit corporation, or, alternatively, the properties, rights, and obligations of another not-for-profit corporation may by operation of law be added to the properties, rights, and obligations of the Association as the surviving not-for-profit corporation pursuant to a merger. The surviving or consolidated not-for-profit corporation may administer the covenants, conditions, and restrictions established by this Declaration for the existing property, together with the covenants and restrictions established upon any other property as one project. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants, conditions, and restrictions established by this Declaration for the existing property.

ARTICLE III **ASSOCIATION**

1. **Membership.** Every Person who is an Owner of the fee simple interest in one or more Lots shall be a member of the Association. Ownership of a Lot shall be the sole qualification for membership.
2. **Voting in the Association.** Voting in the Association shall be as follows:
 - (a) **Voting.** Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Section 1 of this Article III. When more than one Person holds an interest in any Lot, all such Persons shall be members and the vote for such Lot shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any Lot.
 - (b) **Declarant's Control of the Association.** Notwithstanding anything in this Article III or elsewhere in this Declaration to the contrary, Declarant shall maintain absolute and exclusive control over the Association and the Architectural Control Committee, including appointment and removal of the President and all other officers of the Association, all directors of the Association board of directors and all members of the Architectural Control Committee, during Declarant's "Marketing Phase" of the Real Estate. The Marketing Phase of the Real Estate, for purposes of this Declaration, shall be conclusively deemed to be the period between the recording of this Declaration and the date that 90% of the Lots in Hanscom-Tappan Addition (as it exists from time to time) have been sold by Declarant to third parties. Until such time, Declarant, in Declarant's sole and absolute discretion, will be entitled to amend this Declaration, amend the Bylaws and Articles of Incorporation of the Association, and cast all votes with respect to the election and removal of Association officers and/or directors and members of the Architectural Control Committee, or any other matter requiring the vote or approval of Association members. Declarant may (but shall not be required to), at any time, voluntarily relinquish all or any part of Declarant's control and rights under this Article.
3. **Quorum Proxies, Voting.**
 - (a) The quorum requirements for meetings of the Association's members shall be as described in the Association's Bylaws.
 - (b) At all meetings of the Association, a member may vote in person or by proxy executed in writing by such member. Such proxies shall be filed with the Secretary of the Association before or at the time of a meeting. No proxy shall be valid after 12 months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his Lot.
4. **Articles of Incorporation and Bylaws.** Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be as set forth in its Articles of Incorporation and/or Bylaws. In any event, if any provision set forth in this Declaration applicable to notice, voting, and quorum requirements are in conflict with any provisions of Kansas law applicable to not-for-profit corporations on the date of this Declaration, or at any time after such date, the

applicable provisions of Kansas law shall control.

ARTICLE IV
COVENANT FOR MAINTENANCE FEES OR CHARGES

1. **Regular and Special Fees and Charges.** Each Owner, by accepting a deed, whether or not expressed in the deed, hereby agrees to pay to the Association or its nominee:

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

2. **Purpose of Regular Fees or Charges.** The regular fees or charges levied by the Association shall be used for payment of Common Expenses, including but not strictly limited to the following:

- (a) Maintenance, care and landscaping of the Common Area, including tangible personal property comprising the Common Area, and payment of any taxes assessed against any of the Common Area;
- (b) Construction and maintenance of an area marker (or markers) and community mailboxes for Hanscom-Tappan Addition;
- (c) Maintenance and care of, and removing ice and snow from, the pedestrian easements; provided; however, that the Owner of each Lot shall maintain, care for, replace and remove ice and snow from pedestrian sidewalks located along the front of each Lot unless the board of directors of the Association specifically elects to provide such maintenance and other services;
- (d) Managing the Association, including necessary legal and accounting expenses;
- (e) Establishing contingency reserves as determined from time to time by the board of directors of the Association;
- (f) Paying insurance premiums for all insurance secured by the board of directors of the Association pursuant to this Declaration. Such insurance premiums may include premiums for public liability and property damage insurance to the extent deemed necessary by the board of directors; and
- (g) Paying such other charges or Common Expenses as may be elsewhere required or authorized by this Declaration, or that the board of directors of the Association may from time to time determine necessary or desirable to meet the purposes of the Association as stated in its Articles of Incorporation, Bylaws, and in this Declaration.

3. **Regular Fees or Charges; Limits Thereon.**

- (a) So long as Declarant shall have control of the Association as described in Section 2(b) of Article III, Declarant shall set the monthly assessment for each Owner in an amount determined by Declarant, in its sole and absolute discretion, to cover the estimated costs of maintaining the Common Areas and performing the obligations and exercising the powers established under this Declaration, and such costs to the Association shall be assessed equally to each Lot within the Real Estate.
- (b) After Declarant shall no longer have control of the Association as described in Section 2(b) of Article III, prior to December 31 of each calendar year, the board of directors of the

Association shall prepare a budget for the following calendar year which shall cover the estimated costs described in Section 2 of this Article IV. On the basis of this budget, the regular assessments for each Owner for the following year shall be established by the Association. Within 60 days following the end of each calendar year, the board of directors shall send to each Owner an annual report of assets and liabilities of the Association determined as of the last day of such calendar year.

- (c) Regardless of whether Declarant shall have control of the Association, on or before the first day of each calendar year, a copy of the annual budget for such calendar year if one is required, together with the proposed regular fees or charges allocable to each Lot shall be delivered to each Owner. If an annual budget is not made as required or Declarant fails to increase the amount of fees or assessments due, a quarterly payment in the amount required by the last prior budget shall be due from each Lot Owner upon each payment date until changed by new regular fees and charges established by the Association or Declarant, as the case may be. Upon reasonable notice, mortgagees and Owners shall have the right to examine the books and records of the Association at the Association's office. At the end of each calendar year, the Association or the Declarant shall determine, as soon as is reasonably possible, all of the costs incurred in that year, and if the costs have exceeded the budget, the deficiency shall be taken into account and defrayed as part of the budget for the following calendar year. If there is an excess of regular fees or charges collected for such calendar year, such excess shall also be taken into account preparing the budget.

4. **Special Fees for Noncompliance with Declaration.** The Association may levy special fees or charges against any Owner to reimburse the Association for costs incurred for the purpose of bringing an Owner, his Residential Unit, or such Owner's Lot, into compliance with the provisions of the Declaration, the Articles, the

Bylaws, and any Rules and Regulations, which special fees or charges may be assessed upon the vote of the board of directors of the Association after notice to the Owner and a reasonable opportunity for such Owner to be heard by the board of directors.

5. **Uniform Rate of Fees or Charges.** Both regular and special fees or charges, other than those imposed in accordance with Section 4 of this Article IV, must be fixed by the board of directors of the Association at a uniform rate for all Lots.

6. **Date of Commencement of Regular Fees or Charges; Due Date.** Regular fees or charges shall be due and payable quarterly on the first day of January, April, July, and October, in equal installments, and shall be delinquent if not paid within 5 days after becoming due and payable. The board of directors may, in its discretion, permit an Owner to pay regular fees or charges in one annual payment, on or before March 1, and if so paid to give to the Owner making such an advance payment a reasonable discount for such prepayment; provided, however, that no discount in excess of 10% shall be given without the affirmative vote of Owners representing ownership of 80% of all the Lots at an annual or special meeting of such Owners. An Owner shall become obligated to pay assessments upon acceptance of title to or taking of possession of such Lot and/or Residential Unit and shall be personally responsible for unpaid assessments of a prior Owner of the Lot. The board of directors may, in its sole discretion, reduce the regular fees or charges assessed against the Owner of a Lot (or Lots) until a Residential Unit is constructed on such Lot (or Lots). Assessments may also be paid by, for and on behalf of Owners by their mortgagees under such terms and agreements as the Association may from time to time deem appropriate by action of its board of directors.

7. **Duties of the Board of Directors with Respect to Fees or Charges.**

- (a) At least 30 days prior to December 31 of each year, the board of directors shall, by resolution, determine the amount of the regular fee or charge. Written notice of such regular fee or charge shall be given to each Owner. Failure of the Association to adopt such a resolution or give

written notice of any regular fee or charge prior to December 31 of any year shall not invalidate any such fee or charge levied thereafter, nor shall failure to levy any regular fee or charge for any one year affect the right of the Association's board of directors to do so for any subsequent year. Any Owner who becomes subject to any fee or charge subsequent to December 31 of any year shall commence payment of such fee or charge on a pro-rata basis commencing on the date such Owner accepts title to or takes possession of the Lot.

- (b) The board of directors shall upon demand at any time furnish to any Owner liable for fees or charges hereunder a certificate in writing signed by the president or secretary of the Association setting forth whether all fees or charges have been paid to date. A reasonable charge may be made by the board of directors for the issuance of such certificate. Such certificate may be recorded in the office of the Register of Deeds for Douglas County, Kansas, and upon recording shall constitute conclusive evidence of the status of payment of any fee or charge for the period stated in the certificate.
- (c) The Association, acting by its board of directors, shall enforce payment of the fees or charges in accordance with this Declaration.

8. **Effect of Non-payment of Fees or Charges.**

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

9. **Subordination of the Lien to Mortgages; Notice of Nonpayment to Mortgagee.** The lien of the fees or charges, regular and special, shall be subordinate and inferior to the lien of any first mortgage now or hereafter placed upon any Lot subject to fees or charges; provided, however, that such subordination shall apply

only to the fee or charge which becomes due and payable prior to the sale, whether public or private, of such Lot pursuant to a decree of foreclosure of any such mortgage or a deed in lieu of foreclosure. Such sale or deed in lieu of foreclosure shall not relieve a Lot from liability for the amount of any fees or charges thereafter becoming due, nor from the lien of any subsequent fee or charge. Any holder of a first mortgage on a Lot who acquires title to such Lot pursuant to foreclosure or deed in lieu of foreclosure shall take title free of any claims for unpaid fees or charges against the Lot which accrued prior to the date title is acquired by such holder. The board of directors, whenever so requested in writing by any mortgagee or contract seller of a Lot, shall promptly, in writing, notify the mortgagee or contract seller of any default in the performance by the individual Owner or contract purchaser of any obligation under this Declaration and any then unpaid charges or fees assessed against the Lot.

10. **Exempt Property.** The following property subject to this Declaration shall be exempted from the fees, charges, and liens created herein: All property dedicated to and accepted by the City of Lawrence, Kansas, or any public utility for public use and purposes, and all property owned in fee simple by the Association.

ARTICLE V **INSURANCE**

1. **Insurance to be Obtained and Maintained by Association.** The board of directors of the Association may obtain and maintain, to the extent reasonably available, the following:

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

Premiums for all insurance obtained and maintained by the Association shall be Common Expenses of the Association. All such insurance shall be written in the name of the Association. The board of directors may secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Association's board of directors, its manager and employees, the Owners, and their respective tenants, servants, agents, and guests.

2. **Insurance to be Obtained and Maintained by Owners.** The Owner of any Lot on which a Residential Unit has been constructed shall have the responsibility to obtain and maintain casualty insurance, insuring all improvements located on the Owner's Lot against loss by fire, lightning, windstorm or other casualty and extended coverage in an amount considered necessary by the Owner.

ARTICLE VI **MANAGEMENT, MAINTENANCE, AND REPAIRS**

1. **Manager or Managing Agent.** The board of directors may employ or contract for the Association a management company or a manager, at a compensation established by the board of directors, to perform such duties and services as the board of directors shall authorize. No management contract or agreement shall, however, be for a period longer than 3 years, and, absent unanimous consent of all members of the board of directors, all such management contracts or agreements shall contain a provision allowing termination thereof by the board of directors at any time, with or without cause, on 90 days (or less) prior written notice to the manager or management company.

2. **Maintenance, Repair, Alteration and Improvements.**

(a) **By the Association.** The responsibility of the Association shall be as follows:

- (i) Provide routine maintenance, care, and landscaping of the Common Area, including tangible personal property comprising the Common Area;
- (ii) Maintain an area marker (or markers), if any, and community mailboxes for Hanscom-Tappan Addition, to the extent not maintained by the United States Postal Service; and
- (iii) Maintenance and care of, and removing ice and snow from, the pedestrian easements not maintained by the City of Lawrence; provided, however, that the Owner of each Lot shall maintain, care for, replace and remove ice and snow from, pedestrian sidewalks located along the front of each Lot unless the board of directors of the Association specifically elects to provide such maintenance and other services.

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

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

- (i) To maintain his Lot and/or Residential unit and all structures, parking areas, and other improvements located thereon in the manner consistent with the Hanscom-Tappan Addition Standard and these Declarations, the Bylaws, and the Rules and Regulations. Each Owner shall be responsible to irrigate his lawn and plantings, as may be necessary and to pay all water charges therefor;
- (ii) To irrigate the lawn and to replace trees and plantings located on or appurtenant to the Owner's Lot with trees and plantings comparable to those for which replacement is required, even though such trees and plantings may have been planted by Declarant; and
- (iii) To maintain the driveway and sidewalk located upon or appurtenant to the Owner's Lot, including repair and replacement thereof, and the removal of snow, ice, and debris therefrom, and to sweep routinely, and remove leaves from, driveways, sidewalks, decks, and patios which are appurtenant to the Owner's Residential Unit.

(c) **Enforcement of the Association's Maintenance Obligations by the City of Lawrence.**

Notwithstanding anything in this Declaration to the contrary, Declarant agrees that the City of Lawrence, Kansas (the "City"), shall be a third party beneficiary of the covenants set forth in Section 2(a) of this Article VI, with respect to the Association's obligations to maintain the Common Areas. If the Association shall fail to maintain the Common Areas as required by this Article VI, or elsewhere in this Declaration, the City shall be entitled to enforce such obligations in accordance with this subparagraph (c). Prior to taking any action to enforce the Association's obligations, however, the City shall be required to provide the Association with written notice specifying in detail the obligations which are not being performed by the Association and a 30 day period within which to fully perform all obligations described in the

City's notice, or if the Association's failure is of a character as to require more than 30 days to fully perform, then in such event, the Association shall have 30 days to commence the performance of such obligation and shall diligently pursue the performance of such obligation until completion. If, after receipt of the City's written notice, the Association shall fail to perform such obligation or to commence performance of such obligation within such 30 day period, the City shall be entitled to either (i) seek specific performance of the Association's obligation in a court of competent jurisdiction, or (ii) perform such obligation on behalf of the Association and bill the Association or each Owner directly for their proportionate share for all of the City's costs to perform such obligation.

ARTICLE VII

NEW CONSTRUCTION, IMPROVEMENTS, AND ALTERATIONS

1. **Architectural Control Committee.** There is hereby established an Architectural Control Committee, which shall consist of 3 persons, the initial members of which shall be JERRY WILLIS, TIM KELLER and ALLEN BELOT. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. The affirmative vote of a majority of the members of the Architectural Control Committee shall be required in order to adopt or promulgate any rule or regulation or to make any finding, determination, ruling, or order, or to issue any permit, consent, authorization, or approval pursuant to the authority contained in this Declaration. If, however, (i) by death or resignation of all the members of the Architectural Control Committee, there shall be no remaining members of the Committee who can name successors, and (ii) Declarant shall not have the power to name members of the Architectural Control Committee in accordance with Section 2(b) of Article III, and only in such events, a majority of the Owners may elect new members of the Architectural Control Committee at an annual or special meeting of such Owners. If Owners elect the members of the Architectural Control Committee pursuant to the foregoing sentence, the Architectural Control committee shall consist of 3 persons having a term of 3 years, with the initial terms staggered such that one term expires each year.

2. **Residential Structures Size.** Each Residential Unit built on a Lot shall have a minimum of 1,200 square feet of above grade gross living area if the Unit consists of a single above grade floor and a minimum of 1,350 square feet of above grade gross living area if the Unit consists of more than one above grade floor.

3. **Garages.** Each Residential Unit must have an attached enclosed garage with capacity for a minimum of 2 cars.

4. **Fencing.** Fencing is prohibited except in the rear yard and side yard of a Lot on which a Residential Unit is built; provided, however, that a fence in the side yard may not extend closer to the front yard than 10 feet behind the vertical plane of the garage opening of the Residential Unit as extended into the side yard. All fencing must be made of wood materials and no fence may exceed 6 feet in height.

5. **Storage Sheds.** Storage sheds and other accessory structures are only permitted in the rear yard of any Lot. Not more than one storage shed is permitted on any Lot and no storage shed or other accessory structure may exceed 8 feet by 10 feet for width and depth and the highest point may not exceed 7 feet above the ground. Materials for storage sheds and other accessory structures must be the same type and color as the primary structure on the Lot.

6. **Exterior Paint Colors for Residential Units.** The exterior paint colors of the Residential Units, and other buildings located on a Lot, shall be limited to non-primary colors and must be approved by the Architectural Control Committee in advance.

7. **Enforcement.** The board of directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Control Committee