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Emily White

Deputy

ABERDEEN HOMEOWNERS' ASSOCIATION

**AMENDED AND RESTATED DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR ABERDEEN FIRST ADDITION,
ABERDEEN SECOND ADDITION, AND ABERDEEN 3RD ADDITION**

DATED: JUNE 11, 2002

The following instruments ("Declarations") are subject to this amendment and restatement:

instrument: Declaration of Covenants, Conditions, and Restrictions for Aberdeen Addition

subject real estate: Aberdeen First Addition to Wichita, Sedgwick County, Kansas

date of instrument: April 30, 1994

**filing information: Film 1442
Page 1368**

previous amendments: none

instrument: Declaration of Covenants, Conditions, and Restrictions for Aberdeen Second Addition

subject real estate: Aberdeen Second Addition to Wichita, Sedgwick County, Kansas

date of instrument: January 22, 1998

**filing information: Film 1753
Page 0877**

previous amendments: none

instrument: Declaration of Covenants, Conditions, and Restrictions for Aberdeen 3rd Addition

subject real estate: Aberdeen 3rd Addition to Wichita, Sedgwick County, Kansas

date of instrument: October 14, 1999

filing information: Film 1979
Page 0708

previous amendments: none

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ABERDEEN FIRST ADDITION, ABERDEEN SECOND ADDITION, AND ABERDEEN 3RD ADDITION DATED JUNE 11, 2002 ("Amended and Restated Declaration") was adopted by the Board of Directors of the Aberdeen Homeowners' Association by resolution at a duly called meeting of the directors on May 1, 2002 and was approved by:

- (1) signatures of a majority of all members of the association owning lots in the Aberdeen First Addition to Wichita, Kansas;
- (2) a 2/3 vote of owners of lots in the Aberdeen Second Addition to Wichita, Kansas present at a duly called meeting of the association on June 11, 2002; and
- (3) a 2/3 vote of owners of lots in the Aberdeen 3rd Addition to Wichita, Kansas present at a duly called meeting of the association on June 11, 2002.

RECITALS

A. The Declarations referenced above contain covenants, conditions and restrictions for three adjoining additions to the City of Wichita that are enforced and administered by the Aberdeen Homeowners' Association ("Association").

B. The Declarations encumber and restrict the lots in the Aberdeen First, Aberdeen Second, and Aberdeen 3rd Additions to the City of Wichita, Sedgwick County, Kansas ("Aberdeen Additions").

C. The Declarations for each of the Aberdeen Additions are similar but not identical.

D. The Association desires to amend each of the Declarations and to restate each of the Declarations in the form of this "AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR ABERDEEN FIRST ADDITION, ABERDEEN SECOND ADDITION, AND ABERDEEN 3RD ADDITION".

E. The developer of each of the Aberdeen Additions, 3 A.H., Inc. ("Developer"), has consented to the terms of the Amended and Restated Declaration.

F. Effective on its filing date with the Sedgwick County Register of Deeds, the Amended and Restated Declaration would amend and restate each of the Declarations.

G. The Declaration for the Aberdeen First Addition provides, in section 10.10, that any provision in such declaration may be amended or repealed, or additional provisions added to such Declaration by a written instrument that is executed by owners of record having a majority of votes of all members and not less than a majority of all lots. The consent of the Developer is required if the Developer owns three lots or more that are not designated as common areas.

H. The Declaration for the Aberdeen Second Addition and the Declaration for the Aberdeen 3rd Addition provide, in section 11.10, that any provision in such declarations may be amended or repealed, or additional provisions added to such declarations if a resolution of the directors of the Association approves the changes and if after notice to members, such changes are approved by a 2/3 vote of the owners of each addition present at a meeting and if an amendment is filed of record with the Sedgwick County Register of Deeds with a certificate of secretary certifying that the vote was taken at annual or special meeting of such owners that was called in accordance with bylaws and the requisite votes approving the amendments were received. The consent of the Developer is required if the Developer owns one or more lots that are not designated as common areas.

Now, therefore, for and in consideration of these premises, the Association and its members hereby amend and restate the Declaration as follows:

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Aberdeen First Addition, Aberdeen Second Addition and Aberdeen 3rd Addition, is hereby made effective the date of filing with the Sedgwick County Register of Deeds.

ARTICLE I.

DEFINITIONS

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

1.1 “Association” shall mean and refer to the Aberdeen Homeowners’ Association, a nonprofit corporation, previously incorporated under the laws of the State of Kansas, its successors and assigns.

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

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

1.4 “Common Area” shall mean those portions of the Property owned by Developer or the association for the common use and enjoyment of the members of the Association, as follows:

Reserves A, B and C, Aberdeen First Addition to Wichita, Sedgwick County, Kansas;

Reserves A, B and C, Aberdeen Second Addition to Wichita, Sedgwick County, Kansas;

Reserve C, Aberdeen 3rd Addition to Wichita, Sedgwick County, Kansas

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

1.6 “Lot” shall mean and refer to each platted Lot within the Property upon which there may be constructed a single-family residence or twin home residences, as permitted herein. If twin homes are constructed on any of the Twin Home Lots, then each twin home and the real property appurtenant thereto, shall be regarded hereunder as a separate Lot even though not separately platted.

1.7 “Member” shall mean and refer to every person or entity who or which is an Owner of a fee or undivided fee interest in any Lot, but not including any Owners who have sold their interest under executory contract. During the time any such executory contract is in force, the contract buyer shall be considered to be the Member rather than the contract seller. When more than one person holds an interest in a Lot, all such persons shall be Members.

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

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

1.10 “Property” shall mean and refer to all of the property described as:

Aberdeen First Addition to Wichita, Sedgwick County, Kansas;

Aberdeen Second Addition to Wichita, Sedgwick County, Kansas;

Aberdeen 3rd Addition to Wichita, Sedgwick County, Kansas.

1.11 “Structure” shall mean and include any thing or device, the placement of which upon any Lot may affect the drainage or appearance of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, swimming pool, tennis court, clothesline, sandbox, radio or television antenna, fence, curbing, paving wall, satellite dish, signboard or any temporary or permanent improvement to such Lot. “Structure” shall also include any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of surface water from, upon or across any Lot, in accordance with the master drainage and grading plan for the Property as referenced below, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot.

1.12 “Twin Home Lots” shall mean Lots 43-50, inclusive, and Lots 52-59, inclusive, Block 3, all in Aberdeen 3rd Addition.

1.13 “Water Lots” shall mean the following:

Lots 19-32 and 35-40, inclusive, Block 3, in Aberdeen First Addition;

Lots 1-25, inclusive, Block 3, in Aberdeen Second Addition;

Lots 5, 6, 19, 20, 21, 23, 24, and 25, inclusive, Block 1, Aberdeen 3rd Addition;
and

Lots 6-23, inclusive, Block 2, Aberdeen 3rd Addition; and

Lots 1-12, inclusive, and Lots 19-50 inclusive, Block 3, Aberdeen 3rd Addition.

ARTICLE II.

MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. The Association shall have as Members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members, and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

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

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

B. Any Member who is in violation of this Declaration, as determined by the Board, shall not be entitled to vote during any period in which such violation continues. Any Member who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote during any period in which any such assessments are due and unpaid.

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

ARTICLE III.

PROPERTY RIGHTS IN THE COMMON AREA; MAINTENANCE

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

A. The right of the Board to establish rules regarding the activities on or uses of the Common Area and to restrict or eliminate some or all types of activities or uses thereof;

B. The right of the Board to limit the number of guests of Members;

C. The right of the Board to establish, on behalf of the Association, uniform rules and regulations pertaining to the use of the Common Area, including, but not limited to, the recreational facilities thereof;

D. The right of the Board, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage the Common Area; provided that the rights of such mortgagees shall be subordinate to the rights of the Members;

E. The right of the Board to suspend the use of the Common Area and any recreational facilities thereon by a Member and his family for any period during which any assessment against his or her Lot remains unpaid and delinquent, and for a period not exceeding sixty (60) days for any single infraction of the rules and regulations of the Association. The Board shall have the right to employ third parties on behalf of the Association and to delegate to such parties the right to determine whether violations of this Declaration or rules or regulations have occurred with regarding to the Common Area;

F. To charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

G. The right of the Board, on behalf of the Association, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be determined by the Board; and

H. The covenants and restrictions contained herein.

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

3.3 Waiver of Use. No Member may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his or her Lot.

3.4 Common Area and Street Rights-of-Way, Amenities, Improvements and Maintenance. The Association shall be responsible for all costs of owning, maintaining and operating the Common Area and improvements thereon, including, but not limited to, all fertilizing, watering and replacement of lawns, shrubs, flowers, plantings and trees following the initial planting thereof, the mowing of lawn areas, payment of taxes and assessments, payment of liability and property insurance premiums, and lake and playground lake and swimming pool operations, maintenance and improvements, if applicable.

ARTICLE IV.

COVENANTS CONCERNING ASSESSMENTS AND LIENS

4.1 General Assessments. For the purpose of providing funds for the operation of the Association, and for the operating, maintaining, caring, insuring, improving and conducting such other activities and taking such other actions pertaining to the Common Area as the Association shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions, the Association shall have the right, in each year, to assess against each Lot a general assessment. The general assessment shall subject each Lot (including each Twin Home Lots as referenced provided in Section 1.6 above) to a lien to secure payment thereof.

The annual general assessment effective January 1, 2002, shall be \$144.00. The obligation of each Owner to pay assessments hereunder shall commence on the date title is conveyed to such Owner and is not dependent upon there being a residence erected thereon. The general assessment for each Lot shall be due and payable in full on March 1 of each year by all Owners of that Lot. If the assessment is not paid by March 1, in full, then a late fee in the amount of \$15.00 shall be assessed for each calendar month after February that the payment is not made in full (including late fees). For example, if the assessment is not paid until July 15th, then the total amount due shall be \$204.00 (\$144.00, plus late fees for March, April, May, and June). Payment shall be "made" when it is delivered to the treasurer of the Association. The late fee shall not exceed \$90.00 on any annual assessment.

4.2 Liability and Transfer Assessment.

A. Each Owner of a Lot shall be jointly and severally liable for payment of all assessments and late fees.

B. At any time legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer a fee to the Association an amount equal to Two Hundred Dollars (\$200.00). Removal or addition of joint tenants shall not trigger payment of the fee if one or more persons have an ownership interest both before and after such transfer. Filing of a transfer-on-death deed shall not trigger payment of the fee; however, upon the death of the surviving grantor, the fee shall be due and payable.

4.3 Limitations on General Assessments.

A. The Association shall have authority to increase the general assessment. The annual general assessment may not be increased from year-to-year by the Association, by more than \$24.00 without a vote of the membership of the Association.

B. The annual general assessment for any year may be increased to an amount greater than that permitted by subparagraph A. of this section only by an affirmative vote of two-thirds of the vote of the Members in attendance in person at a meeting duly called for such purpose.

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

4.4 Special Assessments. In addition to general assessments, the Association may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot (including Twin Home Lots as referenced in Section 1.6 above) for the purpose of providing additional funds (not available through general assessments) to carry out its duties and other functions and purposes contemplated hereunder. No such special assessment shall be valid unless two-thirds of the Members present at the meeting duly called approve the same. Any special assessments shall become a lien against each Lot in the same manner otherwise provided for in this Article. Further, the Association shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach shall result in an expenditure by the Association for repair or remedy. Any special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Association.

4.5 Collection and Expenditures. The Association shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration. The Association may, in addition to such assessments, charge and assess costs, including reasonable attorneys' fees, and penalties and interest for the late payment or nonpayment thereof. The Association shall have the authority to expend all monies collected from such assessments, costs, penalties and interest for the payment of expenses and costs in

carrying out the duties, rights and powers of the Association as provided for in this Declaration and the Articles of Incorporation and Bylaws of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining. The Association shall not be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year.

4.6 Assessments and Liens; Delinquency. If any annual assessment due on March 1st, together with any costs, penalties and interest as herein provided, is not fully paid by August 1st of such year, then the balance due, plus any costs, penalties and interest as herein provided, shall become a lien on the Lot. If any special assessment is not paid within 30 days after it is due, then the balance due, plus any costs, penalties and interest as provided herein, shall become a lien on the Lot. Such liens shall remain until the obligation has been fully paid or otherwise satisfied.

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

4.8 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. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by the Association.

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

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

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 (15%) percent 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.

ARTICLE V.

USE, OCCUPANCY AND CONDUCT RESTRICTIONS

5.1 General. The Property is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereof of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to ensure the best development of the Property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to secure and maintain proper setback from streets and adequate free spaces between Structures; and, in general, to provide adequately for proper drainage from each Lot onto adjacent Lots and Common Area.

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

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

Exterior walls and facings of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, stucco, wood siding, wood paneling, glass, glass blocks, vinyl or steel siding, or any combination thereof or as approved by the New Construction DRC.

A one story residence shall contain not less than 1,100 square feet of finished floor area, exclusive of basements, porches and garages. A one and one half, two story residence, bi-level, tri-level and quad-level residence, exclusive of basements, porches and garages, shall contain not less than 1,600 square feet of finished floor area, exclusive of basements, porches and garages. Notwithstanding the foregoing, the two twin homes constructed on a Twin Home Lot shall contain not less than 2,000 square feet of finished floor area in the aggregate for both such twin homes, exclusive of basements, porches and garages.

Each residence shall, unless otherwise approved by the New Construction DRC, include a poured concrete basement which shall contain a floor area comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages.

All roofs on all building improvements on any such Lot shall be wood, tile or Approved Composition. As used in this Declaration, "Approved Composition" shall mean Heritage II Weatherwood or such other equivalent composition roofing materials as are approved in writing by the New Construction DRC from time to time.

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

C. Initial Design Committee Rules. The following rules have been established by the Design Committee. The rules may be amended or supplemented without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the Design Committee to determine current rules.

- ii. The yard in front of the home shall be at least eighty percent (80%) grass.
- iii. The yard in back of the home shall be at least eighty (80%) grass unless otherwise approved by the Association DRC.
- iii. In the event of the construction of any retaining walls, the plan and materials utilized must be approved in writing in advance by the Design Committee.
- iv. No "home-made" basketball backboards or supports shall be permitted. All basketball goals and supports shall be first approved in writing by the Association DRC.
- v. Except for basketball goals, all recreation and play equipment shall be located behind the home.
- vi. No storage shed shall be permitted except as may be specifically approved by the Association DRC as to design, materials, and location. Any shed constructed on a Water Lot shall be constructed on the side of a home and no portion of the shed shall extend beyond the front or the back of the home. If any shed is permitted, it shall be 12 feet or less in length and width and shall be 10 feet or less in height.

- vii. All vegetable gardens shall be located behind the home.
- viii. Dog runs must be screened from view from neighboring Lots with fencing or other appropriate material and must be constructed with materials approved by the Design Committee. Chain link shall not be approved.
- ix. All exterior wood surfaces on homes (excluding decking) must be painted, or stained and sealed.
- x. Any temporary covering of a swimming pool, tennis court, patio, or any other portion of a Lot that is rigid or "bubble" type shall be deemed a Structure that is subject to the provisions of the Declaration and the rules of the Design Committee.
- xi. No window shall contain any reflective material such as aluminum foil.
- xii. Pool buildings or gazebos, if approved by the Association DRC, may be constructed within any portion of the setback area applicable to the Lot; provided that the same shall not exceed one story in height and are allowed by applicable building codes.
- xiii. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots.
- xiv. All sculpture or "yard art" must first be approved in writing by the Design Committee before installation.
- xv. As soon as practicable after completion of a dwelling on a Lot and not later than 18 months after the date of initial occupancy of the dwelling, the Owner shall plant a lawn, a minimum of three trees in the yard with the trunk of each tree being a minimum of one inch in diameter, and nine additional perennial shrubs, bushes or trees on the Lot. At least one of the trees shall be planted in the front yard.

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

5.4 Damage to Common Area, Etc., Prohibited. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area, street rights-of-way, the residence or Lot of any other Owner. Specifically, each Owner shall repair any damage sustained to any other Lot, Common Area or street right-of-way

in connection with the construction of Structures on such Owner's Lot, including, but not limited to, damage to lawn areas, landscaping and sprinkler systems as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that DIG SAFE (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines which have been installed.

5.5 Residences. No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family residence for private use, a private garage, and other Structures incidental to residential use, that are approved in writing by the appropriate Design Committee as specified herein. Twin homes may be constructed on Twin Home Lots. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot without the prior written approval of the New Construction DRC. Except as otherwise approved by the New Construction DRC, the exterior of storage buildings and other buildings constructed on a Lot shall be constructed with the same material and color scheme as the residence.

5.6 Occupancy. In addition to any governmental restrictions on occupancy, a twin home or single family residence shall not have more than four occupants who are not lineal descendants or lineal ancestors or foster children of a person who is an owner or a tenant. For purposes of this limitation, only two owners who are occupants or two tenants who are occupants (or one owner who is an occupant and one tenant who is an occupant) can exclude lineal descendants and lineal ancestors and foster children. The provisions of this section shall not apply to a residence on a lot owned solely by a not for profit corporation.

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

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

5.9 No Business Allowed. Except as otherwise specified in this Declaration or as authorized in writing by the Board, no retail, wholesale, manufacturing or repair business of any kind shall be permitted on any Lot or in any residence or structure, even though such activity does not include the employment of any additional person or persons in the performance of such services. If they do not generate a material increase in traffic or cause more than four cars to be parked by visitors at the residence at any time, the following home occupations are hereby approved: residential home building contractor; Amway, Avon and similar sales representative; child care; hair dresser; and realtor.

5.10 Temporary Buildings. Except as authorized by the Board, no basement of a partially completed residence, tent, shack, garage, barn or outbuilding erected on a Lot covered by this Declaration shall at any time be used for human habitation, temporarily or permanently. No structure of a temporary character shall be used for human habitation.

5.11 Used Houses; Trailers. No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon the Property. No trailer or mobile home can be moved, placed or permitted to remain upon a Lot subject to this Declaration.

5.12 Animals. No animals or insects, except dogs, cats or other household pets, shall be kept or maintained on any Lot. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Property without the express written consent of the Board. The Board may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot, and the Owners shall strictly comply therewith.

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

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

5.15 Antennas/Common Areas. No external television antennas, radio antennas, or permanent clothesline structure shall be erected. An Owner may install, within the Owner's Lot, a television satellite dish having a diameter of not more than 24 inches as long as the location of such satellite dish is acceptable to the Association DRC.

5.16 Vehicles and Trailers. Except as authorized in writing by the Board, no automobile, truck, motorcycle, motorbike, motorhome, camper, boat, house trailer, boat trailer, camper trailer or trailer or any other vehicle of any type or description may be stored upon any of the Common Area, in the street, or in the open on any Lot.

5.17 Commercial Equipment and Commercial Trailers. No commercial vehicles (other than automobiles) or commercial trailers of any type shall be parked overnight in the open on any Lot or in the street, except for vehicles and trailers parked on a Lot and used in connection with construction on such Lot.

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

5.19 Requirement to Keep Lot in Good Order and Repair. All Lots and all improvements therein or thereon, shall be maintained in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other

improvements. Such maintenance shall be in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood. If, in the opinion of the Board, any Owner fails to perform the duties imposed by the preceding sentence, the Board, after approval by a two-thirds decision of the Board, and after fifteen (15) days' written notice to Owner to remedy the condition in question, shall have the right, through its agents and contractors, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof shall be a binding personal obligation of such Owner. The Board may establish a special assessment on such Lot for the cost thereof, together with interest thereon at the rate specified in Section 4.11 above, and enforce the same as provided in Article IV hereof.

5.20 Division of Lots Prohibited. Except as authorized by the New Construction DRC, and except for Twin Home Lots as provided herein, no platted Lot shall be split or divided into more than one Lot or building site. A residence may be built on more than one Lot.

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

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

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

5.24 Fences.

A. With respect to any Lot on which Developer has constructed an entry monument, fence, "living fence" or wall, an Owner may not install or construct any fence or wall which is visible from adjacent streets without the written approval of the Developer or the Association DRC.

B. Except as provided in paragraph A immediately above and subject to paragraph C immediately below, all Lots, other than Water Lots, may have a black wrought iron fence, a Good Neighbor Fence or both. No fence shall exceed six feet in height. A "Good Neighbor Fence" is the type of wood privacy fence that either has pickets covering the posts and supports on the outside of the fence or appears substantially the same from both sides. . No vinyl fencing is permitted. Fencing may not be installed in front of a residence. No fences shall be constructed or maintained on Water Lots except for privacy fences immediately adjacent to patios which are appurtenant to a residence and except for black wrought iron fences which do not exceed six feet in height and which are approved by the Design Committee.

Two Water Lots in the First Addition [lots 27 and 39 in block 3] have fences in violation of this provision. Such fences are excepted from this provision because the Developer approved such exceptions. The Developer no longer has authority to grant such exceptions and none will be granted.

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

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

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

5.26 Drainage. From and after the date of commencement of construction of improvements on a Lot, the Owner of such Lot shall cause such Lot to be graded so as to strictly comply with Lot grading and drainage plans, requirements and standards relating to water drainage from such Lot to other Lots and/or the Common Area, as such requirements, standards and plans are established by the city and/or county within which the Lot is located.

Developer has established a master grading and drainage plan for the Lots and each Owner shall strictly comply with the same.

No Owner shall place or install any Structure, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls, in any drainage easement or channel. The Association DRC or persons designated by the Association DRC shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such covenant. In the event at any time the Association DRC determines that a Lot is not in compliance with such covenant, the Association DRC shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or after such additional time as may be specified by the Association DRC, the Owner of such Lot has not taken reasonable steps to correct the same, then the Association DRC shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to 20 percent of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Association may thereafter establish a special assessment applicable to such Lot for the costs thereof and enforce the same as provided in Article IV hereof.

Developer recommends that any time a Lot is surveyed by an Owner, whether in connection with mortgage financing or otherwise, that the surveyor verify that the grading and drainage pins located in the rear of the Lot are at the elevations required by the master drainage plan referred to above.

5.27 Water Encroachment; Flood Insurance. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage, water may encroach into the yard areas within such Lot. Water may accumulate in areas of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the residence, yard, trees, vegetation, fences, gazebos, patios, playground equipment or other improvements or installations of Structures within the Lot.

Some Lots may have previously been located in a designated flood plain, in which situations the Developer or another party, has caused the same to be removed from the flood plain by increasing the elevation thereof with fill as required by the City of Wichita, Kansas, the Kansas Department of Water Resources and the Federal Emergency Management Agency. Prior to construction of a residence or other structures on any such Lot, the Owner thereof is encouraged to verify, through its contractor, compliance with the requirements of such city and agencies, consider inherent risks and determine whether to obtain and maintain flood insurance.

Neither Developer, the Association, building contractor or brokers involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

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

5.29 Airport. Notice is hereby given that the Property may be located in the vicinity of an airport and each purchaser of a Lot assumes that risk (if any) associated therewith.

5.30 Boat Docks. No boat docks, piers, moorings, boathouses, slips or similar Structures may be constructed within any Common Area or Lot.

ARTICLE VI.

THE ASSOCIATION

6.1 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. The Association shall perform each and every duty required of it by this Declaration.

B. The Association shall own, maintain, water, fertilize, mow and keep clean the Common Area and the portion of the street rights-of-way between the Lots and Common Area and the public streets within or adjacent to the Property. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer or the Association.

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

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

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

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

G. The Board may select from time to time a single company to provide trash removal service for all residences on the Lots and shall post conspicuous notice of such decision within the Property. Within ninety (90) days after such company is selected, each Owner shall begin to utilize the company identified by the Board to provide trash removal service at such Owner's Lot and continue to use such company exclusively until such time as the Board designates a different trash service company or notifies the Owners that it is no longer necessary for all Owners to utilize the same trash removal service company.

H. Each Owner shall be responsible for paying all costs and fees associated with trash removal services related to such Owner's Lot. In the event at any time and from time to time the Board determines to change the company providing such trash removal service for the Lots, the Board shall post conspicuous notice of such change at least ninety (90) days in advance of such change and on or before the expiration of such ninety (90) day period, each Owner shall switch its service exclusively to the other company specified by the Board.

I. Board shall have the authority to assess penalties for any violation of the provisions contained in this Declaration. Prior to assessing the penalty, the Board shall mail written notice to the Owner's last known address concerning the noncompliance. If the Owner fails to cure the violation within fifteen (15) days following the mailing of such notice by the Board or if there is a recurrence of the violation during that fifteen (15) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a penalty against the Owner and his or her Lot in an

amount determined by the Board to be appropriate in its discretion. Until paid in full, the penalty shall accrue interest at the rate of 15% per annum, shall constitute a lien on the Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as a special assessment as referenced in Article IV of this Declaration.

6.2 Operations and Expenses. The Association shall establish such committees as may be provided for in its Bylaws, and may engage a manager, secretaries, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The expenses of committees, the salaries of a manager and other employees and the fees of consultants shall be established and paid for by the Association.

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

6.4 Repair and Restoration of Improvements on Common Area. If any improvements on the Common Area, or any part or portion thereof, be damaged or destroyed by fire or other casualty or by intentional mischief, the Association shall be responsible for the cost and expense of repair and restoration. If there are sufficient insurance proceeds collected as a result of such damage or destruction, the repair and restoration shall be done substantially in accordance with the original plans and specifications for the improvement of same. The repair and restoration work referred to in this section shall be commenced promptly after the happening of the destruction or damage occasioning the same, and once commenced, the same shall be pursued diligently to completion.

6.5 Providing Grading Information to Owners. The Association shall designate a committee of Members to meet with new Lot Owners for the purpose of informing them regarding grading and drainage matters concerning the Lots. This educational process is vital in order to avoid water drainage problems within the Property. Either before or promptly following the purchase of a Lot, each Owner must contact a representative of the Association and ask to be informed concerning grading and drainage matters relating to the Property.

6.6 Opposition to Zoning and Other Matters. Neither the Board nor any Member of the Association may express any opinion on behalf of the Board or the Association pertaining to any applications or requests concerning rezoning, community unit plan approval or amendment, variances, or other land use activity relating to any land in the vicinity of the Property. This prohibition is necessary due to the fact that not all Members will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any Member or member of the Board from expressing his or her personal opinions without indication that such opinions represent the opinion of the Association or the Board.

ARTICLE VII.**EASEMENTS AND ACCESS CONTROL**

7.1 Some Easements Not Shown on Plat. Owners should not rely on the plat of the Property to determine the location of utility or other easements or rights-of-way. Such easements or rights-of-ways are often created by separate instruments not shown on the plat.

7.2 Easements in Favor of Association. The Association, in connection with the use, operation, construction of improvements and amenities, and maintenance of the Common Area, street rights-of-way, and improvements thereon or therein, reserves a perpetual nonexclusive easement and right-of-way over the Lots, Common Area, and such street rights-of-way. Such easement shall be for the purpose of constructing, maintaining, repairing, replacing and rebuilding water sprinkler systems (including water lines) water wells, sprinkler controls, electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewerage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Additionally, the Association reserves a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any entrance, fence, wall, walkway, water sprinkler system (including water wells, sprinkler controls, and electric meters and lines associated therewith), or any signage pertaining to or serving the Common Area or the residential development within any wall, utility and/or drainage easement shown on the current or any future plat of the Property, or located on a Lot but, due to oversight, not actually located in the appropriate easement area.

ARTICLE VIII.**DESIGN COMMITTEES; ARCHITECTURAL CONTROL**

8.1 Committees. Two design committees shall have responsibility for the review, approval or disapproval of plans relating to the construction of Structures on each Lot. One committee shall be the New Construction DRC, which shall review, approve or disapprove all matters pertaining to the construction and completion of the initial residence and related Structures on each Lot. The second committee, the Association DRC, shall review, approve or disapprove all specifications, plans and other matters pertaining to fencing; drainage matters as referenced in Section 5.26 above and elsewhere; and (on a Lot by Lot basis) following completion of the initial residence and related Structures on a Lot, all specifications, plans and other matters for remodeling the initial residence and related Structures, including landscaping, and any additional new Structures to be constructed on such Lot.

8.2 Membership.

A. The members of the New Construction DRC shall be up to three (3) persons appointed by 3 A.H., Inc. ("Developer"). Upon the death or resignation of any member of the New Construction DRC, or in the event Developer desires to remove any member, Developer shall appoint a successor, unless at such time Developer has

relinquished its rights hereunder as hereinafter provided. Following Developer's relinquishment of its right to designate the members of the New Construction DRC, the Association DRC shall have full authority to designate all successor members and to remove members. The decision of a majority of the New Construction DRC shall be binding; provided, the New Construction DRC may delegate its rights and responsibilities hereunder to one or more of its members from time to time. The New Construction DRC may delegate its rights and responsibilities on a limited basis to the Association DRC from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation.

B. The members of the Association DRC shall be up to three (3) persons appointed by the Board. On the death or resignation of any member of the Association DRC, or in the event the Board desires to remove any member, the Board shall appoint a successor. The decision of the majority of the Association DRC shall be binding; provided the Association DRC may delegate its rights or responsibilities hereunder to one or more of its members from time to time.

8.3 Approval Required of Plans and Specifications. Except as otherwise specifically provided in this Declaration, prior to construction of the initial residence and related Structures on a Lot, no Structure shall be commenced, erected, placed, moved on or permitted to remain on such Lot, unless plans and specifications, including grading elevations, therefor shall have been submitted to and approved in writing by the New Construction DRC.

Subsequent to construction and completion of the initial residence and related Structures on a Lot, no existing Structure upon any Lot may be remodeled or altered in any manner as materially changes the exterior appearance thereof, nor shall any new Structure be placed on such Lot, unless plans therefor shall have been submitted and approved in writing by the Association DRC.

The plans and specifications shall be in such form and shall contain such information as may be required by the applicable Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (ii) a finished grade plan for the particular Lot or Lots as prepared in accordance with the master grading and drainage plan.

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

8.5 Rules and Statements of Policy. The Design Committee, or either of them, may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the applicable Design Committee

at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the Design Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Design Committees' discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the applicable Design Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter, provided that (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (ii) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question. In the event that an applicable Design Committee shall fail to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

8.6 Violation. If any Structure shall be remodeled, altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the applicable Design Committee pursuant to the provisions of this Article VIII, such remodeling alteration, erection, maintenance, placement or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Association, any such Structure so remodeled, altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation. If, fifteen (15) days after the notice of such a violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association shall have the right, through its agents and contractors, to enter upon such Lot and to take such steps as may be necessary to extinguish such violations, and the Association may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article IV hereof.

8.7 No Liability. Neither the members of the Design Committees, Developer, the Association, the Board, nor any officer, director, member, agent or employee thereof, shall be liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any performance or nonperformance of any duties, responsibilities or functions under this Declaration, including but not limited to this Article and Section 5.26 hereof.

ARTICLE IX.**NOTICE OF POSSIBLE SPECIAL ASSESSMENTS; AMENITY FINANCING**

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

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

ARTICLE X.**MISCELLANEOUS**

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

10.2 Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, such provisions shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. 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 or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of this Declaration shall control.

10.3 Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together. 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.

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

10.5 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.

10.6 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.

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

10.8 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall insure to the benefit of and be enforceable by the Association, Developer, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of one (1) year 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.

10.9 Amendments. Amendments to this Declaration may be made as follows:

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

B. Resolution. A resolution adopting a proposed amendment shall be proposed by the Board. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners casting not less than two-thirds (2/3) of the aggregate number of votes cast by the Owners present at such meeting.

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 Lot is located. 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.

No amendment materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

10.10 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.

10.11 Enforcement.

A. The covenants set forth herein shall: (1) run with the land; and (2) bind each Owner, and the Owner's heirs, successors, assigns; and all parties claiming by, through or under each Owner.

The covenants shall be taken to hold, agree and covenant by the Owner of each Lot and the Owner's heirs, successors and assigns, to conform and observe this Declaration and each and every term and condition hereof. No restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during the term of its, his or their ownership of a Lot.

B. The Owner or Owners of any of the Property and the Association shall have the right to seek enforcement of and/or to prevent the breach of the terms and conditions set forth herein.

10.12 Subdivision Disclosure and Purchaser Acknowledgment. Developer has prepared a Subdivision Disclosure and Purchaser Acknowledgment concerning Aberdeen 3rd Addition ("Disclosure"), which discloses important information concerning the Property. The Disclosure is subject to change from time to time by the Developer or the Association. **At the time any Owner transfers legal title to a Lot, such Owner shall, as part of the transaction, cause its transferee to execute the Disclosure and return the same to the Developer or the Association.**

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

10.14 Twin Homes; Multifamily; Commercial And/Or Industrial Development. Each Owner is hereby advised that real property in the vicinity of the Property may be developed and operated for twin homes, apartments and other multifamily, commercial and/or industrial purposes. Each Owner is responsible to inform himself or herself concerning the possibility of such developments and no Owner shall rely on any statements made by sales persons concerning future development or uses of any such real property. Developer does not have any responsibility to advise the Owners or the Association concerning any actual or proposed zoning or other land use proceedings relating to any real property outside the Property.

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CONSENT OF DEVELOPER

3AH, Inc., a Kansas corporation, hereby consents to the terms and conditions of the Amended and Restated Declarations set forth above.

3 A.H., INC.

By:

Jay Russell, President

ATTEST:

By:

Michael J. Brand Secretary

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

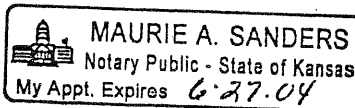
On this 6 day of AUGUST, 2002 before me personally appeared Jay Russell and MICHAEL J. BRAND to me personally known, who, being by me duly sworn did say that they are the President and Secretary, respectively, of 3 A.H., Inc., and that said instrument was signed on behalf of said corporation and acknowledged to me that they executed the same as the free act and deed of said corporation.

In testimony whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Maurie A. Sanders
NOTARY PUBLIC

My Appointment Expires:

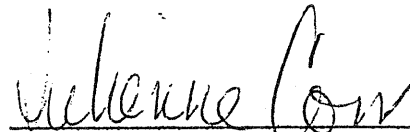
June 27, 2004



**CERTIFICATE OF SECRETARY OF
ABERDEEN HOMEOWNERS' ASSOCIATION**

I, the undersigned, do hereby certify that: (1) I am the duly elected and acting secretary of Aberdeen Homeowners' Association, a Kansas corporation; (2) the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Aberdeen First Addition, Aberdeen Second Addition, and Aberdeen 3rd Addition, comprising of 28 pages [not including this page] were duly adopted by resolution of the Directors of Aberdeen Homeowners' Association; (3) the amended and restated declaration was then approved by a two-thirds vote of the owners of lots in the Second Addition present at a meeting held on June 11, 2002 and notice of which was duly given to the Members pursuant to § 11.10 of the Declarations for the Second Addition; (4) the amended and restated declaration was then approved by a two-thirds vote of the owners of lots in the 3rd Addition present at a meeting held on June 11, 2002 and notice of which was duly given to the Members pursuant to § 11.10 of the Declarations for the 3rd Addition; (5) signatures have been obtained evidencing consent to the amended and restated declaration by owners of record having a majority of votes of all members from the First Addition and not less than a majority of all lots in the First Addition; and (6) the meetings at which all votes were taken were meetings that were called in accordance with the bylaws of the association and that the requisite votes approving the amendment were received.

IN WITNESS WHEREOF I have hereunto subscribed my name the 6th day of August, 2002.



Julienne Corr, secretary