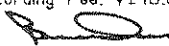




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**DECLARATION OF**  
**COVENANTS, CONDITIONS, RESTRICTIONS, DISCLOSURES AND EASEMENTS**  
**OF**  
**THE GLEN AT HAWTHORNE**

**AFTER RECORDING, RETURN TO:**  
Ron H. Harnden  
Triplett, Woolf & Garretson, LLC  
2959 N. Rock Rd., Suite 300  
Wichita, Kansas 67226

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THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, DISCLOSURES AND EASEMENTS OF THE GLEN AT HAWTHORNE ("Declaration"), is made this 5th day of October, 2006, by Twenty-First Growth, LLC, a Kansas limited liability company ("Declarant").

RECITALS:

A. Declarant is the owner of certain Property (as defined herein) in Wichita, Sedgwick County, Kansas and desires to establish and develop a patio home residential community therein;

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

C. Declarant shall establish The Glen at Hawthorne Owners' Association (the "Association");

**D. The Lots are also subject to a Hawthorne Master Declaration of Covenants, Conditions, Restrictions, Disclosures and Easements dated June 4, 2003, as thereafter amended, supplemented, modified and restated (the "Master Declaration").**

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

ARTICLE 1

Definitions

Section 1.01. "Association" shall mean the Association as defined in Recital C above.

Section 1.02. "Board" shall mean the Board of Directors of the Association.

Section 1.03. "Common Area" shall mean, subject to Section 3.06 below, those portions of the Property and improvements thereon, to be owned by Declarant or the Association for the common use and enjoyment of the Owners, as follows:

Reserves "B", "C", "D" and the portion of Reserve "F" described on Exhibit "A" hereto, Hawthorne Third Addition, an Addition to Wichita, Sedgwick County, Kansas (the "Third Addition")

Section 1.04. "Declarant" shall mean Twenty-First Growth, LLC, a Kansas limited liability company, and its successors and assigns; provided any such successors or assigns shall acquire for the purpose of development or sale all or any portion of the remaining unsold Lots, and in the conveyance to any such successor or assign, such successor or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance.

Section 1.05. "Lot" shall mean each of Lots 1-21, inclusive, Block 1 in the Third Addition; provided, that if any Lot is expanded by deeding a portion of any Common Area or Hawthorne Common Area (as defined in the Master Declaration) to a Lot, or is subdivided into two or more parcels by lot split, boundary shift or otherwise, then each expanded or subdivided parcel shall be a "Lot" hereunder. Lots 15 and 16, Block 1, in the Third Addition have been, or will be, expanded beyond the actual platted lots by deeding a portion of Reserve F of the Third Addition to each such Lot so that each originally platted Lot with the portion of such Reserve F shall be a Lot hereunder.

Section 1.06. "Master Declaration" shall have the meaning specified in Recital "D" at the beginning of this Declaration.

Section 1.07. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to a Lot, including contract sellers, but excluding those having such interest merely as a security for performance of an obligation.

Section 1.08. "Property" shall mean and refer to all of the Lots and Common Area.

Section 1.09. "Structure" shall mean and include any thing or device, the placement of which upon any Lot may affect the appearance or drainage of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis court, light pole, clothesline, radio or television antenna, fence, curbing, paving, wall, satellite dish, signboard, mailbox and related structure or any temporary or permanent improvement to such Lot. "Structure" shall also include (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot and (ii) any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Declarant, Board, the municipality having jurisdiction over the Lots or the drainage guidelines or plan referenced in Sections 6.19, whichever is most stringent.

## ARTICLE 2

### Membership; Voting Rights; and Association Matters

Section 2.01. Membership. The Association shall have as members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become members, 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.

Section 2.02. Voting Rights. All members, so long as they shall qualify under this Article 2, shall be entitled to vote on each matter submitted to a vote at a meeting of 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 Lot is owned or held by more than one (1) Owner as tenants in common, joint tenancy or any other manner of joint, common or undivided ownership or interest, such Owners shall collectively be entitled to only one (1) vote relative to such Lot, and if such Owners cannot jointly agree as to how that vote should be cast, no vote shall not be allowed with respect to such Lot. Fractional votes shall not be permitted.

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

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

D. The Board shall adopt such bylaws, consistent with the terms hereof, the articles of incorporation and the laws of the State of Kansas, as it deems advisable for any meeting of Owners with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Owners for voting purposes, voting by ballot without a meeting, voting by proxy and such other matters concerning manner in which Association decisions may be determined, with or without meetings as it shall deem proper.

Section 2.03. Formation. The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Kansas. Declarant shall form the Association following recordation hereof, and shall convey the Common Area to the Association prior to the date it fully transfers its rights as referenced in Section 2.04 below, by special warranty deed, in an "AS IS" condition subject to all easements, covenants, restrictions, declarations, rights-of-way, and liens for non-delinquent ad valorem taxes and special assessments.

Section 2.04. Initial Operation. Notwithstanding the provisions of this Declaration, the operation of the Association and the Board shall be within the absolute and exclusive control of the Declarant until such time as Declarant fully and completely transfers its rights pursuant to Section 8.01 B below, written notice of which transfer shall be given to the Association by Declarant. During the initial operation of the Association and the Board by Declarant, Declarant may perform and exercise any and all rights and obligations hereunder related to the Association and the Board and Declarant shall appoint and remove in its discretion the members of the Board.

Each Owner, by acceptance of a deed to a Lot, vests Declarant with the authority to fully exercise its rights under this Section 2.04 and in Section 8.01 B hereof.

Section 2.05. Board of Directors. All actions of the Association shall be taken on its behalf by the Board, except for (a) when a vote of the members is specifically required by this Declaration, the articles of incorporation, or the bylaws, and (b) the initial operation thereof by Declarant as referenced herein.

### ARTICLE 3

#### Property Rights In The Common Area

Section 3.01. Easements of Enjoyment. Subject to the provisions of Section 3.06 below, every member of the Association shall have a nonexclusive 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 limit the number of guests;
- B. The right of the Board to establish uniform rules and regulations pertaining to the use of the Common Area;
- C. The right of the Board, on behalf of the Association, to borrow money for the purpose of maintaining, repairing, restoring and improving the Common Area and facilities and to mortgage the Common Area in connection with such financing; provided that the rights of such mortgagees shall be subordinate to the rights of the Lot Owners hereunder;
- D. The right of the Association to suspend the use of the Common Area by Owner(s) and family and guests for any period during which any assessment against his Lot(s) remains unpaid and delinquent, for any violation hereof or any infraction of the rules and regulations of the Association;
- E. The right of the Declarant or Board, on behalf of the Association, to grant easements, dedicate or transfer 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;
- F. The covenants and restrictions contained herein; and
- G. No Owner, occupant or guest thereof shall conduct themselves within the Common Area in a manner which unreasonably interferes with the use and enjoyment thereof by others.

Section 3.02. Extension of Rights. Subject to the provisions hereof, Owner's right of enjoyment in the Common Area shall automatically extend to all members of his immediate family residing on his Lot.

Section 3.03. Waiver of Use. No Owner may exempt himself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him 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 Lot.

Section 3.04. Maintenance and Other Common Expenses. The Association shall maintain and keep in good repair and appearance the Common Area, including, without limitation, all landscaping and improvements, all grass, trees, shrubbery or other plantings, sidewalks, fences, walls, street lights, private streets, gates, benches, trash receptacles, sprinkler systems, informational and directional street signage installed by Declarant within the Common Area, and any other property the Declarant or the Association designates as a maintenance obligation of the Association. Further, the Association shall bear the responsibility for all utility charges incurred because of fountains, lights, and sprinkler systems or other equipment that are installed on or about the Common Area.

Section 3.05. Common Area Amenities and Improvements. Declarant shall pay the initial cost of constructing or installing the original improvements and amenities to the Common Area listed on Exhibit "B" attached hereto; provided, Declarant or the Association may install additional amenities or improvements as either elects from time to time. Declarant, its contractors and any subcontractors, and the employees thereof, shall have a perpetual, nonexclusive easement and right of access upon the Common Area for the construction and installation of Common Area improvements and amenities.

Section 3.06. Alteration of the Common Area. Notwithstanding anything to the contrary provided herein, the Declarant or the Association may alter or reconfigure the Common Area from time to time by replatting, lot split, boundary shift or other subdivision procedures or deeding land, for the purpose of adding land to, or removing land from, the Common Area. Automatically, without the necessity of amending this Declaration, upon the completion of any such alteration, reconfiguration or deeding any land (a) removed from such area shall cease to be Common Area, and, thereupon, no member shall have any easement or right of use or access thereto and (b) added to the Common Area shall become a part thereof, and thereupon each Owner shall have a nonexclusive easement and right of use or access thereto as provided in Section 3.1 above.

Section 3.07. Water For Irrigation. Declarant intends to drill a well or wells for water to irrigate the Common Area. If Declarant is unsuccessful in obtaining appropriate permits or authorizations for such well(s) or is unable to complete a satisfactory well or wells, then water from the city in which the Property is located will be used for such irrigation, at a higher cost.

## ARTICLE 4

### Assessments; Liens; Enforcement And Other Matters

Section 4.01. General Assessments. Except as specifically provided in this Article, all Lots shall be subject to a charge to be assessed under this Declaration, which general assessments are to be paid by the respective Owners thereof to the Association, in advance, on the 1st day of January, in each year; provided, the Board may permit the general assessment charge to be paid annually, semiannually, monthly or quarterly. The obligation of any Owner to pay such assessments shall commence upon purchase of a Lot (or such later date as may be designated by Declarant), and is not dependent upon there being improvements erected thereon. No Owner shall have any right to withhold payment of assessments hereunder by virtue of the non-payment thereof by any other Owner or the violation of these covenants, conditions, and restrictions or any rule or regulation promulgated by the Declarant, Association or any other Owner. The amount of the initial general assessment shall be established by Declarant by notice given to the Owners. In the event a Lot is initially transferred by Declarant other than the 1st day of any calendar year, the general assessment for such year shall be prorated and paid at the time of such transfer.

**The assessments, general or special, required to be paid under this Article 4 are in addition to any assessments, general or special, payable by each Owner under the Master Declaration. Pursuant to Section 4.15 of the Master Declaration, the Hawthorne Master Homeowners' Association may require the Owners to pay the assessments arising under the Master Declaration to the Association which shall in turn remit such assessments to the Hawthorne Master Homeowners' Association as a lump sum. If the Hawthorne Master Homeowners' Association shall so request that payments be remitted by the Association, the Owners shall timely deliver payment of such assessment to the Association.**

Section 4.02. Determination of General Assessments. Each year the Board, or the Declarant on behalf of the Board, shall, prior to January 1 (or as soon thereafter as it is able to do so), determine the total amount to be raised by the general assessment charges for the next succeeding year. Subject to any exemptions permitted by this Declaration, each Lot shall be assessed an equal amount for general assessments. Should the Board at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Association, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments as it shall deem necessary.

### Section 4.03. Basis of Assessments; Exemptions; Proration; Transfer Assessment.

A. All general assessments shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner or Owners, except that in view of the substantial expenditures incurred by Declarant in connection with the Common Area, Declarant, and any properly licensed general contractor owning a Lot for the purpose of constructing a residence thereon and offering the same for sale, shall be exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as Declarant or such contractor holds legal title thereto (provided, the

assessment exemption for any such general contractor which is not affiliated with Declarant shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor and shall cease if the Lot and residence thereon is occupied for residential purposes).

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

C. At any time legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association a fee equal to Four Hundred Dollars (\$400.00); provided the requirement to pay such a fee shall not apply to either:

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

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

Section 4.04. Special Assessments. In addition to general assessments, the Association may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot for the purpose of providing additional funds (not available through general assessments) to carry out its duties and other functions and purposes contemplated hereunder. No such special assessment shall be valid except upon the approval of members holding at least sixty percent (60%) of the total votes represented, in person or by proxy, at the meeting duly called for the purpose of approving the same. Further, the Board shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach results in an expenditure by the Association for the repair or remedy of such breach. Any special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Association.

Section 4.05. Collection and Expenditures. The Association shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration, and may, in addition to such assessments, charge and assess costs and expenses, including reasonable attorneys' fees, and penalties and interest for the late payment or nonpayment thereof. The Board, or the Declarant on its behalf, 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 Board shall not be obligated to spend in any year all the sums collected in such year by way

of general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall the Board be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

Section 4.06. Assessments and Liens; Delinquency. Thirty (30) days after any general or special assessment shall be due and payable, and unpaid or otherwise not satisfied, the same shall be and become delinquent and shall automatically constitute a lien on the applicable Lot and shall so continue until the amount of said charge and assessment, together with all costs, late fees, fines, penalties and interest as herein provided, has been fully paid or otherwise satisfied. The Association may cease to provide all and any of the services provided by or through the Association with respect to any Lot during any period that an Owner is delinquent in the payment of any sum due under this Declaration, or due to any other default hereunder, and no such cessation of services shall result in reduction of any amount due from the Owner before, during or after such cessation. No claim of the Association for assessments or other charges due hereunder shall be subject to setoffs or counterclaims made by any Owner.

Section 4.07. Notice of Delinquency. At any time after any general or special assessment against any Lot has become a lien and delinquent, the Association may record in the office of the Register of Deeds, Sedgwick County, Kansas, a Notice of Delinquency as to such Lot, which Notice shall state therein the amount of such delinquency and that it is a lien, and the interest, costs (including attorneys' fees and expenses) fines and late fees, which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof, and such Notice shall be signed by an officer of the Association. Upon payment or other satisfaction of said assessment, interest, late fees, fines and costs and expenses in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

Section 4.08. Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Lot, each Owner shall be held to vest in the Declarant and the Association the right and power to prosecute all suits, legal, equitable, or otherwise, which may be necessary or advisable for the collection of assessments, charges or fines, and the Declarant or the Board shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated therewith (whether such liens are now in existence or are created at any time in the future) the benefit of any redemption, homestead or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

Section 4.09. Enforcement of Liens. Each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in like manner as a mortgage on real property as provided by the laws of Kansas. Each current and future Owner hereby consents to the foreclosure procedures specified in this Article. In any action to foreclose any such lien, the Association shall be entitled to its costs and

expenses, including reasonable attorneys' fees, and expenses, and such late fees, fines and accrued interest for delinquent charges and assessments as shall have been established by the Board. The Declarant and/or the Association shall have the right to bid on a Lot at the foreclosure sale. The foreclosure proceedings with respect to liens established pursuant to this Declaration, may be foreclosed at anytime within twenty (20) years following the filing of the Notice of Delinquency; provided, if at the expiration of such twenty (20) year period suit shall have been instituted for collection of the assessment, the lien shall continue until payment in full or termination of the suit and sale of the applicable Lot.

Section 4.10. Subordination to Mortgages. Each and every assessment and lien, together with any costs, penalties and interest reserved under this Declaration, shall be subordinate to the lien of any valid bona fide, first mortgage which has been, or may hereafter be, given in good faith and for value by any bank, savings and loan or other institution in the business of providing residential lending, 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.

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

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

Section 4.13. Fines. The Board shall have the authority to assess fines for any violation of this Declaration by an Owner, which fines shall be determined in the sole discretion of the Board; provided, a fine may not exceed Fifty Dollars (\$50.00) per day of violation unless unanimously approved by all members of the Board. Prior to assessing such fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner, specifying the violation. If the noncompliant Owner fails to cure the violation within twenty (20) days following the mailing of such notice by the Board, or if there is a reoccurrence of the violation during such twenty (20) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his Lot in an amount determined by the Board to be appropriate in its discretion, which shall be paid within ten (10) days following the date notice thereof is given to such Owner by written notice deposited in the mail to the Owner's address last known to the Board, or personal delivery

thereof to the residence of such Owner. Until paid in full, the amount of such fine shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as an assessment under this Article 4.

## ARTICLE 5

### Covenants for Maintenance; Enforcement

Section 5.01. Maintenance. Each Owner (other than Declarant) shall keep his Lot and all improvements therein or thereon in good order, condition and repair, including, but not limited to, seeding or sodding grass, the pruning and trimming of all trees and shrubbery, removal of diseased or dead trees within a reasonable time, weeding of plant beds, the maintenance, repair and replacement (including the painting or other appropriate exterior care) of all Structures, buildings and other improvements, roofs, gutters, downspouts, exterior building surfaces and other exterior improvements, any enclosed courtyards, decks, and the interior of the residence, including all appliances, heating and air conditioning equipment and plumbing, exterior doors, windows, glass walls, chimney flues, and structural items, as well as the patio, patio fence, fence or wall, if any, driveways and sidewalks appurtenant to such Lot, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Lots. Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's Lot.

If in the opinion of the Board, any Owner fails to perform such Owner's duties as described above, or otherwise breaches such Owner's obligations as specified in this Declaration, the Association, upon approval by the Board and after fifteen (15) days written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available hereunder or at law or equity), through its agents and employees, to enter upon the Lot or Lots involved and to repair, maintain, repaint, remove, and restore such Lot or Lots or such improvements, or otherwise bring such Lot or such improvements into conformity herewith and the cost thereof (hereinafter sometimes called the "Compliance Charge") shall be a binding personal obligation of such Owner which shall mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in the following manner: The Association may record an Affidavit of Nonpayment of Compliance Charge in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property as last known to the Association, and (c) the amount of the Compliance Charge which is unpaid. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of the Affidavit of Nonpayment of Compliance Charge. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the aforesaid Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other

public charges as are by applicable law made superior. The Compliance Charge shall accrue interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or such lesser rate as permitted by law. The Declarant and Association, and their contractors and representatives shall have a perpetual right and nonexclusive easement to enter upon any Lot to perform its rights and obligations under this Article 5.

Following the installation of the water sprinkler system, lawn, shrubs, trees and other plantings on a Lot by the Owner(s) thereof (it being understood that the Association shall have no responsibility therefore), the Association shall assume control of certain Lot lawn care duties as follows:

- A. Fertilizing of the lawn, as necessary, in the opinion of the Association;
- B. Regular mowing and edging of the lawn areas; and
- C. Periodic snow removal from driveways, sidewalks, front porches and front steps after snowfall has subsided and at times to be determined appropriate by the Board.

The cost of maintenance to be provided by the Association under subparagraphs A and B shall be included in the general assessments to which the Lots are subjected hereunder. The per Lot cost of snow removal may be billed to the Owners as incurred and will not necessarily, therefore, be part of the regular assessments hereunder, due to the difficulty of predicting such costs in the process of establishing the assessments.

There shall be no responsibility on the part of the Association for maintenance or care of flower beds, sprinkler system, trees, bushes, and similar plantings located on any Lot. Owners of the Lots shall provide appropriate care for all trees, bushes, flower beds and similar plantings on their respective Lots and shall promptly replace all damaged, diseased or dead trees, bushes and other plantings, subject to the other provisions contained in this Declaration. *The Association shall not be responsible for the cost of installing, adjusting, maintaining, repairing or replacing the irrigation systems within any Lot; it shall be the obligation of the Owner of each Lot to do so.*

## ARTICLE 6

### Use; Occupancy and Conduct Restrictions

Section 6.01. General. The Property is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to ensure the best development of the Property; to encourage and secure the erection of attractive homes of appropriate size and appearance thereon, with appropriate locations thereof on building sites; to secure and maintain proper setback from streets and adequate free spaces between Structures; and, in general, to provide adequately for proper drainage from each Lot onto adjacent

Lots, the Common Area and the Hawthorne Common Area (as defined in the Master Declaration).

Section 6.02. Initial Policy Guidelines. The following initial policy guidelines have been established for Lots, and the same may be waived, changed or revoked from time to time by the Board without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the Board to determine current policy guidelines.

A. There shall be no rock or gravel yards and all yard areas, exclusive of improvements, shall be predominately grass.

B. In the event of the construction of any retaining walls, the plan and materials utilized must be previously approved in writing by the Board.

C. All basketball backboards shall be either white or glass and shall be placed or installed only at a location approved by the Board; may not be attached to a residence; and shall be first approved by the Board. All recreation and play equipment shall be located where approved by the Board.

D. All vegetable gardens shall be in the back yards only.

E. Dog runs, if permitted at all by the Board, must be screened from view from neighboring homes with fencing or other appropriate material.

F. All exterior wood surfaces on homes (excluding decking) must be painted, or stained and sealed.

G. No window shall contain any reflective material provided by anyone other than the original window manufacturer and approved by the Board. Non-reflective, heat-reducing window film will be allowed but must be applied professionally.

H. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots, and no stack shall exceed four feet (4') in height.

I. All forms of sculpture or "yard art" must first be approved by the Board.

J. Within ninety (90) days following substantial completion of a residence on a Lot, but in any event, no later than the planting season immediately following completion of such residence, the Owner thereof shall sod or seed the entire front yard, the side yards and back yard of such residence thereof, and shall plant at least fifteen (15) perennial shrubs and/or bushes and five (5) trees on the Lot, with a minimum of three (3) deciduous trees having trunks at least two inches (2") in diameter measured at a point two feet (2') above ground level and a minimum of two (2) pine or cedar trees at least four feet (4') in height above ground level; a minimum of three (3) of such trees shall be planted in the front yard of such Lot.

K. No zoysia, Bermuda or prairie grass lawn (as determined by the Board) shall be permitted.

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

M. No Christmas lights shall be lighted before Thanksgiving and shall be taken down no later than March 15 of the following year.

N. No storage sheds shall be permitted except as may be specifically approved by the Board. Any storage shed approved by the Board must be permanent in nature and shall be constructed using exterior materials and design characteristics of residence constructed on the Lot.

O. Mail box Structures shall be approved by the Board prior to construction.

P. Trash and refuse container storage areas shall be installed at a location approved by the Board and shall be screened in a manner approved by the Board.

Section 6.03. 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 by the Board. No activity, which may be or become a nuisance to the neighborhood shall be carried on upon the Property.

Section 6.04. Damage Prohibited. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area, street rights-of-way, the residence or Lot of any other Owner. Specifically, each Owner shall repair any damage sustained to any other Lot, Common Area, or street right-of-way in connection with the construction of Structures on such Owners' Lot. Owners are hereby advised that DIG SAFE (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines or other underground electrical or plumbing lines which have been installed and may be owned by the Association or by individual property owners.

Section 6.05. Residences. No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family, patio home residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the Board as specified herein. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot without the prior written approval of the Board.

Section 6.06. 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 Board.

Section 6.07. 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.

Section 6.08. Home Professions and Industries. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Declarant or the Board. The Declarant or the Board, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Declarant or the Board, to be compatible with a high-quality, limited access, residential neighborhood. The following home occupations are hereby approved: Amway, Avon and similar sales representatives; limited childcare; and realtor, so long as insubstantial traffic is associated with any of the foregoing activities, as determined in the discretion of the Board. Neither the Association, the members of the Board nor the Declarant shall have any liability to any Owner or occupant of a Lot as a result of authorizing or failing to authorize a profession or home industry activity hereunder. The business activities of Declarant concerning the Property and the construction, remodeling, renting, leasing and marketing of Lots or residences shall not be construed to be a violation of this Section.

Section 6.09. Temporary Buildings. Except as authorized by the Board, no basement of a partially completed residence, tent, shack, garage, barn or outbuilding erected on a Lot covered by this Declaration shall at any time be used for human habitation, temporarily or permanently, nor shall any Structure of a temporary character be used for human habitation.

Section 6.10. Used Houses; Trailers. No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon the Property, nor shall any trailer be moved, placed or permitted to remain upon a Lot subject to this Declaration; provided that Declarant may install for construction, administrative and sales purposes a trailer or trailers upon a Lot(s).

Section 6.11. Animals. No animals, including horses or other domestic farm animals, fowl or poisonous reptiles of any kind may be kept, bred or maintained on any Lot, except a reasonable number of commonly accepted household pets approved from time to time by the Board. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted without the express written consent of the Association. The Association 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. Dogs, cats and all other pets or animals shall be confined at all times to the Lot and must be kept on a leash when outside the Lot. No dogs or other animals shall be continually or regularly staked or chained on any Lot. All domestic pets must be properly immunized as required by applicable ordinances, codes and laws.

Section 6.12. Signs. Except as authorized by the Board, and except for those installed by Declarant, its marketing representatives or builders or contractors as authorized by Declarant, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; provided, however, that permission is hereby granted for the erection of unlighted, temporary, standard sized signs by real estate firms for the sole and exclusive purpose of advertising for sale or lease the Lot and residence upon which it is erected and improvements thereon, if any.

Section 6.13. Sight Lines. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the minimum front building setback lines established on the plat of the Property. No hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct sight lines at any Lot corner. Trees, shrubs and other plants, which die, shall be promptly removed from the Property.

Section 6.14. Antennas. Except as authorized by the Board, there shall not be erected any external television or radio antennas or permanent clothesline structures, and no Owner shall erect any Structures, either permanently or temporarily, upon the Lots; provided, notwithstanding the foregoing, an Owner may install within his or her Lot a television satellite dish having a diameter of not more than 24 inches, so long as the location of such dish is satisfactory to the Board. Should any part or all of the restrictions set forth in this Section be unenforceable because the same violate a statute or the First Amendment or any other provision of the United States Constitution, the Board shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections within the Property and any such rules and regulations shall be binding upon all of the Lots and the Owners thereof.

Section 6.15. Vehicles and Trailers. Except as authorized by the Board, no automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer or any other vehicle of any type or description may be stored upon any of the Common Area, nor may any boat, commercially equipped vehicle, boat trailer, house trailer, camper, recreational motor vehicle, camper trailer or similar items be stored or permanently, continually or regularly parked on any street, driveway or in the open on any Lot. **Parking bays within the Property are intended for the general use of licensees and invitees of the Owners on a nonreserved basis and are not for the storage or permanent, continual or regular parking of vehicles by Owner's or the members of their families.**

Section 6.16. Division of Lots Prohibited. Except as authorized by the Board, no platted Lot shall be split or divided into more than one Lot or building site, but more than one Lot may be used as a building site for one dwelling.

Section 6.17. Fences.

A. Declarant may, and hereby reserves the right to, in its sole discretion, construct and install a fence, "living fence" (a combination of trees and other fencing or wall materials), wall or entrance treatment of a style and of materials satisfactory to the Declarant, in its sole discretion, within any of the fence or wall easement areas, any entry areas shown on the plat of the Property, within other easement areas established by other easement instruments, or within the Common Area. With respect to any Lot on which Declarant has constructed an entry monument, fence "living fence" or wall, the Owner(s) may not install or construct any fence or wall which is visible from adjacent streets without the approval of the Declarant or the Board.

B. Fencing may not be installed to the front of a residence constructed on a Lot, other than model homes or administrative offices referred to in Section 6.18 below. No fences shall be constructed or maintained on Lots except for privacy fences immediately adjacent to patios which are appurtenant to a residence and except for black wrought iron or tubular steel fences which do not exceed six feet in height and which are approved by the Board.

C. All fences shall be approved by the Board 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 6.19 shall have a minimum of four inches (4") clearance above the ground level (other than posts installed in the ground) in order to not divert or disrupt water drainage from the Lot.

Section 6.18. Model Homes and Real Estate Offices. Notwithstanding anything to the contrary appearing elsewhere in this Declaration, any Lot owned by Declarant, or any person or entity so authorized by Declarant, 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. Temporary front yard fencing may be installed on a Lot while a "model home" or administrative office is located thereon.

Section 6.19. 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 the master grading and drainage plan relating to the Lot. Declarant 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 Structures, including, but not limited to, trees, shrubbery, landscaping, sand boxes, gardens, retaining walls, in any drainage easement or channel. The Board or persons designated by the Board shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination by the Board concerning whether or not a Lot is in compliance with such guidelines, standards and

plans, shall be final and binding on all Owners and; provided, so long as Declarant owns a Lot, the Declarant (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Board under this Section 6.19 upon the specific request of any Owner and, in the event Declarant so overrides a specific decision of the Board, any subsequent reference in this Section 6.19 to the Board shall refer to the Declarant in lieu of the Board as to the specific decision in question. In the event at any time the Board determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Board 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 such additional time as may be specified by the Board, the Owner of such Lot shall have not have taken reasonable steps to correct the same, the Board 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 twenty percent (20%) 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 4 hereof. Declarant 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. It shall not be Declarant's obligation to enforce compliance with the master grading and drainage plans. The Board and the Declarant shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master drainage and grading plan or any approved lot drainage and grading plan or for the Board or the Declarant not requiring a lot drainage and grading plan or compliance therewith or for the quality or compaction of any soil.

Section 6.20. Water Encroachment; Flood Insurance. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, 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 as a result of such rainfall. 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 Declarant, 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, the Federal Emergency Management Agency and any other agency having jurisdiction thereof. 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 the other applicable agencies, consider inherent risks and determine whether to obtain and maintain flood insurance. Neither

Declarant nor the Association shall have any liability or responsibility for any such damage resulting from such water encroachment.

Section 6.21. Artificial Vegetation. No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.

Section 6.22. Erosion; Water Pollution Control Permit and Related Matters; Compliance With Laws. Each Owner shall comply strictly with any law or ordinance regarding erosion or runoff, including, if applicable, a Stormwater Pollution Prevention Ordinance, the Kansas Water Pollution Control General Permit And Authorization To Discharge Stormwater Run-Off From Construction Activities Under the National Pollutant Discharge Elimination System or similar ordinance or law adopted by the city or other governing body having jurisdiction over the Property. Such permit, laws, and regulations, together with laws and ordinances of the city and county in which the Property is located, require that erosion and sediment control measures be implemented in connection with construction activities on such Lot, including, but not limited to, site work such as clearing, excavating, and grading the Lot, in order to eliminate or substantially reduce stormwater discharge, the discharge of pollutants and water quality violations. Significant penalties may be imposed in the event activities on any Lot are not conducted in full compliance with the aforementioned permit, laws, regulations and ordinances. Each Owner agrees to conduct activities, including construction activities, on his or her Lot strictly in accordance with this Declaration, all laws, rules, regulations, and ordinances now or hereafter in effect, including, but not limited to those referenced above, and shall indemnify and defend Declarant and the Association from any consequences of such Owner's, or his contractors' or subcontractors', failure to so comply, including but not limited to all damages, liabilities, fines, penalties and costs and expenses (including reasonable legal fees and expenses).

Section 6.23. Off Street Parking. Each of the Lots shall provide four (4) off-street parking spaces for each residence within the garage and driveway areas.

Section 6.24. Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance, repair, and replacement of a private residence and improvements related thereto.

Section 6.25. View. No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any Structure, planting material or other item on any other part of the Property, which is permitted by this Declaration, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

Section 6.26. Leasing or Renting Residences. The provisions of this Declaration shall apply to all Owners and occupants of a Lot, as well as to their respective tenants, guests, invitees and family members. The rental or leasing of a residence is not prohibited; provided, the Board may require a minimum lease term of not less than twelve (12) months. All rental arrangements shall be in writing and shall require the tenant to comply with this Declaration, the articles and

bylaws and any rules and regulations adopted from time to time by the Board. Any Owner renting a residence to another party shall make available to the tenant copies the Declaration, articles, bylaws and rules in effect at the time of such rental, and shall be responsible for such tenant's compliance therewith. An Owner shall provide the Board with a copy of his rental agreement within five (5) days following the request therefore by the Board. **In the event any Owner leases or rents a residence on a Lot, such Owner shall prepay to the Association all assessments applicable to the rented Lot for a period of twelve (12) months in advance during the term of the lease or rental arrangement.**

Section 6.27. Safety and Security. Each Owner and occupant of a Lot and the respective family members, guests and invitees thereof, shall be responsible for their own personal safety and the security of their property in the subdivision within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the subdivision within the Property designed to enhance the level of safety or security which each person provides for himself and his property. Neither the Association, the Board and committees thereof, nor Declarant shall in any way be considered insurers or guarantors of security within the subdivision within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the subdivision within the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its family members, guests, invitees and all occupants of a Lot that the Association, its Board and committees, and Declarant are not guarantors of security or safety and that each person or entity using the subdivision within the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

## ARTICLE 7

### Architectural Control

Section 7.01. Approval Required. No Structure, projection from a Structure, or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein or thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the Declarant, or after its relinquishment of its powers under this Article 7, the Board or another design review committee established by the Board as to (a) harmony of external design and location in relation to and effect upon surrounding Structures, topography and the overall community design of the Lots; (b) the **character** and **color** of the exterior materials; (c) the quality of the exterior workmanship; and (d) the location thereof on the Lot. **Due to the nature of a patio home development, a very limited number of exterior designs for residences and related improvements will be approved by the Board and therefore, each Owner or potential Owner should become familiar with the design criteria which are applicable to the Property.** In the event the Board

fails to approve or disapprove such design and location within thirty (30) days after the complete plans and specifications, including landscaping and drainage plans as required by Section 6.02 L hereof, have been submitted to and received by it, approval will not be required, and this Article will be deemed to have been fully complied with. The Declarant or Board may, from time to time, develop and promulgate policy guidelines for the application of the design review provisions. The Declarant or Board may deny approval for any proposed Structure if the Owner is delinquent as to any assessments due hereunder. The policy guidelines may include (x) review procedures, (y) aspects and objectives of review, and (z) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design practices that, though optional, are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered. The policy guidelines are intended to assist the Declarant or Board and the Owners in the ongoing process of community design. The guidelines may be modified and supplemented from time to time by the Declarant or the Board, subject to the approval of the Board. The initial guidelines are contained in Section 6.02 hereof. Additionally, the Declarant or Board may establish other guidelines outside this Declaration from time to time. The provisions of this Section are not applicable to any Lots owned by Declarant.

Section 7.02. Form of Plans and Specifications. Any Owner seeking approval of the Board shall, at its expense, submit plans and specifications in such form and shall contain such information as may be required by the Declarant or Board, but in any event shall include (a) a site plan of the Lot or Lots showing the nature, exterior color scheme, kind, shape, height, materials, and location with respect to the particular Lot or Lots (including proposed front, rear, and side set-backs) of all Structures, (b) the location thereof with reference to Structures on adjoining portions of the property, (c) and the number and location of all parking spaces and driveways on the Lot or Lots, **a landscaping plan**, and (d) a Lot specific drainage plan prepared by an engineering firm designated by Declarant or the Board in accordance with the then current master grading and drainage plan applicable to the Lots.

Section 7.03. Removal and Alteration of Structures, Liens.

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

B. If fifteen (15) days after notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, and continued the pursuit thereof with diligence, the

Association or the Declarant or the Board shall have the right, through their agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the cost of such removal and alteration shall be a binding, personal obligation of such Owner and, if not paid in full by such Owner on demand by the Board, the cost shall mature into a lien upon the Lot(s) in question in the following manner: The Association, the Declarant or the Board shall record an Affidavit of Nonpayment of Removal or Alteration Charges in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (i) the legal description of the property upon which the lien is claimed, (ii) the name(s) of the Owner(s) of said Lot as last known to the Association, and (iii) the amount of the removal and alteration charges which are unpaid. The lien shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot whether arising for imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior. The lien may be foreclosed in the like manner as a mortgage on real property as provided by the laws of Kansas at anytime within twenty (20) years following recordation of an Affidavit of Nonpayment of Removal or Alteration Charges. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorney's fees, and such penalties for delinquent charges and assessments as shall have been established by the Association. The lien referenced herein shall be created at the time of the filing and recording of the affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior. The costs incurred by the Association shall accrue interest at the rate established from time to time by the Board, but in no event less than eighteen percent (18%) per annum or such lesser rate as permitted by law.

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

Section 7.04. Right of Inspection. A representative of the Declarant or the Board or any of its agents thereof may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, repair, construction, or alteration of Structures thereon are in compliance with the provisions hereof, and neither the Board, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 7.05. No Liability. Neither the Board, Declarant, the Association, 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 or functions under this Article.

Section 7.06. Disclaimer as to Board/Declarant Approval. Plans and specifications are not reviewed for all systems, mechanical, plumbing, electrical, engineering, or structural design, or quality of materials, and by approving such plans and specifications neither the Declarant or the Board, the members thereof, nor the Association assumes any liability or responsibility therefor, nor for any defect in any Structure constructed from such plans and specifications. Neither Declarant, the Association, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, quitclaims, and covenants not to sue for any claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance, and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

## ARTICLE 8

### The Association

#### Section 8.01. Powers and Duties.

A. The Association shall have the rights and powers as set forth in its articles of incorporation and bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration, including, but not limited to, those enumerated in this Article. The initial Board shall consist of one (1) or more directors, each of whom shall be a designee of Declarant, and who shall be appointed, removed and replaced from time to time by Declarant, in its sole discretion, until Declarant has transferred such duties and powers as provided in subsection B below.

B. Declarant may carry out all of the duties and powers herein delegated to the Association and the Board for a period of one (1) year after the date Declarant no longer owns a Lot, after which time the same shall be turned over to the Association or Board, as the case may be, which shall then exercise the powers and duties herein set out; provided, however, that the Declarant may, at its option, at any earlier time, partially or wholly transfer all or any part of such duties and powers to the Association or the Board by written instrument. In the event of a transfer of a portion of such powers and duties by

the Declarant to the Association or the Board, the Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate in the transition of the powers and duties hereunder.

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

D. The Association shall have the right to adopt such policies, rules and regulations as it may deem advisable for the health, comfort, safety and general welfare of the Owners.

E. The Association shall have the right to levy and collect the assessments and charges provided for in this Declaration and to enforce the liens thereby created in the manner herein provided.

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.

G. The Association shall perform its responsibilities hereunder and may exercise any of its rights otherwise contained in this Declaration.

H. 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.

I. 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 Owners.

Section 8.02. Operations and Expenses. The Association may establish committees 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.

## ARTICLE 9

### Easements and Access Control

Section 9.01. Public Utility, Floodway and Drainage Easements Dedicated. Easements for the installation and maintenance of all public utilities and for floodway and drainage on Lots and in the Common Area are dedicated as shown on the recorded plat of the Property.

Section 9.02. 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 and are disclosed on each Owner's title insurance policy.

Section 9.03. Easements in Favor of Declarant and Association. Declarant specifically reserves unto itself, its successors and assigns, and for the Association, and for the contractors and representatives thereof, in connection with the use, operation, construction of improvements and amenities, maintenance, repair and replacement of the Common Area, together with street rights-of-way, as provided herein and improvements thereon or therein, a perpetual, nonexclusive easement and right-of-way over the Lots, Common Area, and such street rights-of-way, including, but not limited to, constructing, maintaining, mowing, repairing, replacing and rebuilding water sprinkler systems, including water lines, water wells, sprinkler controls, and 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, Declarant specifically reserves unto itself, its successors and assigns, and for the Association, 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 treatment, 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. Declarant may have installed a sign advertising the residential development on a Lot or within the Common Area prior to the sale of such Lot or transfer of the Common Area to the Association. Declarant, its successors and assigns, hereby retain an easement for the placement, and replacement, of any such advertising sign until all Lots have been sold by Declarant or its successors and assigns.

## ARTICLE 10

### Enforcement

The Association and the Declarant shall have the right to enforce, by any proceeding at law or in equity (including, but not limited to, obtaining an injunction, whether prohibitive or mandatory), all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration insofar as the same are for the benefit of the Association and Declarant, respectively. The Association and Declarant shall have the right to include in their claim for relief a reasonable sum to reimburse them for their attorneys' fees and any other expenses reasonably incurred in enforcing their rights hereunder. Failure by the Association and Declarant to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Neither shall failure by the Association or the Declarant to enforce the provisions hereof against any Owner shall be deemed a waiver of any provision hereof as to any other Owner.

## ARTICLE 11

### Additional Land

Declarant may, from time to time, annex additional real property (including residential Lots and common area) to the Lots covered by this Declaration, and thereby subject the same to all of the terms, provisions, and conditions of this Declaration (as provisions hereof may be changed, altered, supplemented, deleted or modified solely as to the annexed land specifically by the document annexing such additional real property), by the execution and filing for recordation with the Register of Deeds of Sedgwick County, Kansas, of an instrument expressly stating an intention so to annex and describing such additional real property to be so annexed. During the fifteen (15) year period commencing with the date of the recording of this Declaration, Declarant, its successors or assigns, may annex such additional real property in its absolute discretion. From and after the termination of said fifteen (15) year period, such additional real property may be annexed provided that each such annexation is approved in writing by sixty percent (60%) of the votes represented, in person or by proxy, at a meeting of the Association called for such purpose.

## ARTICLE 12

### Miscellaneous; Limitation Of Liability; Perpetuities; Certain Easements

Section 12.01. Assignment. No Owner shall have the right to assign, independently of a transfer or conveyance of a Lot, any rights or obligations created by or arising under this Declaration and any such attempt at assignment shall not be merely voidable but shall be absolutely null and void.

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

Section 12.03. Perpetuities; Alienation. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property restricting unreasonable restraints against alienation shall not be applied to defeat any provisions of this Declaration.

## ARTICLE 13

### Amendment; Term

Section 13.01. Covenants Running With The Land. The covenants and restrictions of this Declaration shall run with and bind the Lots which is subject to this Declaration for a term of fifty (50) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless at least one (1) year prior to the expiration of such fifty year period or any applicable successive ten (10) year period, there shall be recorded in the Sedgwick County real estate records an instrument directing termination of this Declaration signed by the Owners of at least seventy-five percent (75%) of the Lots.

Section 13.02. Amendment by Declarant. Amendments, including restatements, waivers, modifications, alterations, removals, changes and additions to this Declaration, may be made by Declarant from time to time in its discretion prior to the date on which Declarant fully transfers all of its rights under Section 8.01. B hereof, which such amendments and instruments shall become effective when executed by Declarant and recorded in the office of the Register of Deeds of Sedgwick County, Kansas.

Section 13.03. Amendment. Amendments, including waivers, modifications, alterations, restatements, removals, changes and additions to this Declaration, other than those provided for in Section 13.02, shall be proposed and adopted in the following manner:

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

B. *Resolution*. A resolution adopting a proposed amendment may be proposed by either the Board and or by the membership of the Association. Unless otherwise specified in this Declaration, such proposed amendment must be approved by the Owners of not less than two-thirds (2/3) of the votes represented, either voting in person or by proxy, at an annual meeting or special meeting duly called for such purpose.

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

D. *Declarant's Consent*. Notwithstanding the foregoing, so long as a residence has not been completed on each Lot, any such amendment (including, but not limited to, those modifying the "Initial Policy Guidelines" referenced in Section 6.02 above) shall require the written consent of Declarant in order to be effective.

## ARTICLE 14

### Miscellaneous

Section 14.01. Provisions Binding on Grantee. The Association and each grantee hereafter of any part or portion of the Lots covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Lots, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association and Declarant provided for in this Declaration.

Section 14.02. Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Lots. 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.

Section 14.03. Construction and Validity of Restrictions. All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

Section 14.04. Assignment of Powers. Any and all rights and powers of Declarant provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Declarant to any third party and/or to the Association. The Declarant's assignee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions subsequent to the effective date of the assignment.

Section 14.05. Waiver and Exceptions. The failure by the Association, Declarant, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Lots 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.

Section 14.06. Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

Section 14.07. Singular and Plural, Masculine and Feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

Section 14.08. Successors-in-Interest. Reference herein to either the Association or Declarant shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

Section 14.09. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

Section 14.10. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 14.11. No Liability. Declarant has, using good faith, prepared and recorded this Declaration so that each and every Owner shall have the right and the power to enforce the terms and provisions of this Declaration against every other Owner. However, in the event that this Declaration is, for any reason whatsoever, unenforceable by an Owner (or any other person) in a court of law or otherwise, Declarant shall have no liability of any kind as a result of such unenforceability, and each and every Owner, by acceptance of a deed conveying a Lot or possession of a Structure, acknowledges that Declarant shall have no such liability.

Section 14.12. Twin Homes; Multifamily; Commercial; Office; Industrial Development.. Each Owner is hereby advised that real property in the vicinity of the Lots may be developed and operated for twin homes, apartments and other multifamily, commercial, office or industrial purposes or other purposes other than for single family residences. If the Lots are in the vicinity of a railroad line it is possible that such railroad line may be converted for use as a trail or park area. 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. Declarant 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 located within or outside of the Lots.

Section 14.13. Limitation on Liability. TO THE EXTENT ALLOWED BY LAW AND EQUITY, NEITHER THE DECLARANT (OR ANY MEMBERS THEREOF, OR THE

OFFICERS, EMPLOYEES OR MEMBERS OF SUCH MEMBERS) NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY HEREUNDER TO ANY OWNER, FORMER OWNER OR PROSPECTIVE OWNER FOR CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES IN ANY EVENT.

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

Declarant:

Twenty-First Growth, LLC

By: *[Signature]*  
Tim Buchanan, CEO

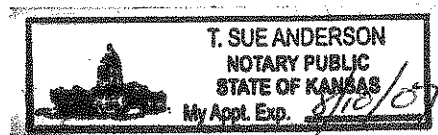
STATE OF KANSAS            )  
  )ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this 5 day of Oct, 2006 before me a Notary Public in and for the County and State aforesaid, personally appeared Tim Buchanan, CEO of Twenty-First Growth, LLC, a Kansas limited liability company, personally known to me to be such ~~Managing Member~~<sup>CEO</sup> and the same person who executed, as such ~~Managing Member~~<sup>CEO</sup> the above and foregoing instrument in writing on behalf of said limited liability company and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

*[Signature]*  
NOTARY PUBLIC

My Appointment Expires: 8/10/07



The undersigned is currently owner of some of the Lots identified above and hereby consents to the forgoing Declaration and covenants, agrees and declares that the Lots currently owned by the undersigned shall be subject to, and bound by, the same.

Sproul Construction Co., Inc.

By: *David Sproul*  
Title: *PRES.*

STATE OF KANSAS            )  
  )ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this 31 day of August, 2006 before me a Notary Public in and for the County and State aforesaid, personally appeared DAVE SPROUL the PRESIDENT of Sproul Construction Co., Inc., a Kansas corporation, personally known to me to be the same person who executed, as such President the above and foregoing instrument in writing on behalf of said corporation and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

*T. Sue Anderson*  
NOTARY PUBLIC

My Appointment Expires: 8/10/07

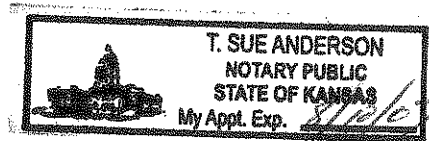


EXHIBIT A

**DESCRIPTION OF  
Part of Res. "F", Hawthorne Third Addition - To Remain a Reserve**

A tract of land lying in a portion of Reserve "F", Hawthorne Third Addition, an addition to Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:

**BEGINNING** at the South most corner of said Reserve "F", being coincident with the Southwest corner of Lot 21, Block 1, said addition, and being on a curve to the right; thence along the said curve 25.58 feet to a reverse curve to the left, said curve having a central angle of  $81^{\circ}24'48''$ , a radius of 18.00 feet, and a long chord distance of 23.48 feet, bearing  $N10^{\circ}30'10''W$ ; thence along the said reverse curve and along the East right-of-way line of Willaimsgate Street 116.71 feet to a point on a reverse curve to the right, said reverse curve to the left having a central angle of  $29^{\circ}11'59''$ , a radius of 229.00 feet, and a long chord distance of 115.45 feet, bearing  $N15^{\circ}36'14''E$ ; thence along said reverse curve to the right and along aforesaid East right-of-way line 20.46 feet, said curve having a central angle of  $03^{\circ}39'07''$ , a radius of 321.00 feet, and a long chord distance of 20.46 feet, bearing  $N02^{\circ}49'48''E$ ; thence deflect from said East right-of-way  $S85^{\circ}20'38''E$ , 29.31 feet to the Southwest most corner of Lot 16, Block 1, said addition; thence along a Westerly line of Lot 17, said block and addition,  $S13^{\circ}55'26''W$ , 23.93 feet to the Northwest corner of said Lot 21; thence along the West line of said Lot 21,  $S21^{\circ}38'45''W$ , 138.90 feet to the **POINT OF BEGINNING**.

Said tract **CONTAINS**: 2,408 square feet or 0.055 acres of land, more or less.

February 22, 2006

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**EXHIBIT B**  
Improvements and Amenities to the Common Area

- Reserves B and C: Installation of parking areas; sprinkler system; grass and plantings; however, portions of such reserves shall be left in a natural, native grass condition.
- Reserve D: Installation of Sprinkler system; grass and plantings; however, portions of such reserve shall be left in a natural, native grass condition.
- Reserve F: The portion thereof which is included in the Common Area shall be improved with the installation of a sprinkler system, grass and plantings and a monument sign; however, portions of such reserve shall be left in a natural, native grass condition.