

(Published at [www.belaireks.gov](http://www.belaireks.gov) on November, \_\_\_\_\_, 2024.)

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING THE RECOMMENDATION OF THE BEL AIRE PLANNING COMMISSION RECOMMENDING CHANGING THE ZONING DISTRICT OF CERTAIN LANDS LOCATED WITHIN THE CORPORATE CITY LIMITS OF THE CITY OF BEL AIRE, KANSAS UNDER THE AUTHORITY GRANTED BY THE ZONING REGULATIONS OF THE CITY.**

WHEREAS, the Governing Body of the City of Bel Aire, Kansas (the "City") has received a recommendation from the Bel Aire Planning Commission for Case No. PUD-24-07 (previously PUD-24-03); and

WHEREAS, the Governing Body finds proper notice was given and a public hearing was held for Case No. PUD-24-07 (previously PUD-24-03) on November 14, 2024, all as provided by law and under authority and subject to the provisions of the Zoning Regulations of the City.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BEL AIRE, KANSAS:**

SECTION 1. The Governing Body adopts the recommendation of the Bel Aire Planning Commission and approves the zone change request from Single-Family Residential District "R-4" to a Planned Unit Development Residential District "R-PUD" to create the Bristol Hollows Addition Planned Unit Development Residential District (the "Bristol Hollows Addition R-PUD").

**Legal Description**

Lots 1 through 19, Block A, and Lots 1 through 21, Block B, Bristol Hollows Addition to the City of Bel Aire, Sedgwick County, Kansas.

**General Description**

53<sup>rd</sup> Street North and Bristol Street, Bel Aire, Sedgwick County, Kansas

The Bristol Hollows Addition R-PUD is subject to the following restrictions, conditions or limitations, and such restrictions, conditions or limitations shall supersede any portion of the application in conflict therewith:

1. The Bristol Hollows Addition R-PUD is created as depicted in Exhibit A and incorporated herein, by reference; and,
2. The plat's text in Exhibit A references additional documents, such as; the Restrictive Covenants, First Amendment to the Original Development Agreement, Wall Agreement, and Easement Agreement Re: Access to Power Meter. These documents are incorporated by reference herein and to the Bristol Hollows Addition R-PUD; and,
3. The applicant shall file the ordinance and all documents incorporated by reference to the Bristol Hollows Addition R-PUD, with the Sedgwick County Register of Deeds. Proof of filings shall be provided to the Bel Aire City Clerk, within 30 days of filing with the Sedgwick County Register of Deeds.

SECTION 2. This Ordinance shall take effect and be in force from and after its adoption by the Governing Body of the City, approval by the Mayor, and publication once in the official city newspaper.

SECTION 3. The City Clerk will file this Ordinance with the Sedgwick County Register of Deeds.

*[Remainder of this page intentionally left blank]*

74 PASSED, ADOPTED, AND APPROVED by the Governing Body of the City of Bel Aire,  
75 Kansas on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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78 CITY OF BEL AIRE, KANSAS  
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82 \_\_\_\_\_  
83 Jim Benage, Mayor  
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85 ATTEST:  
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89 \_\_\_\_\_  
90 Melissa Krehbiel, City Clerk  
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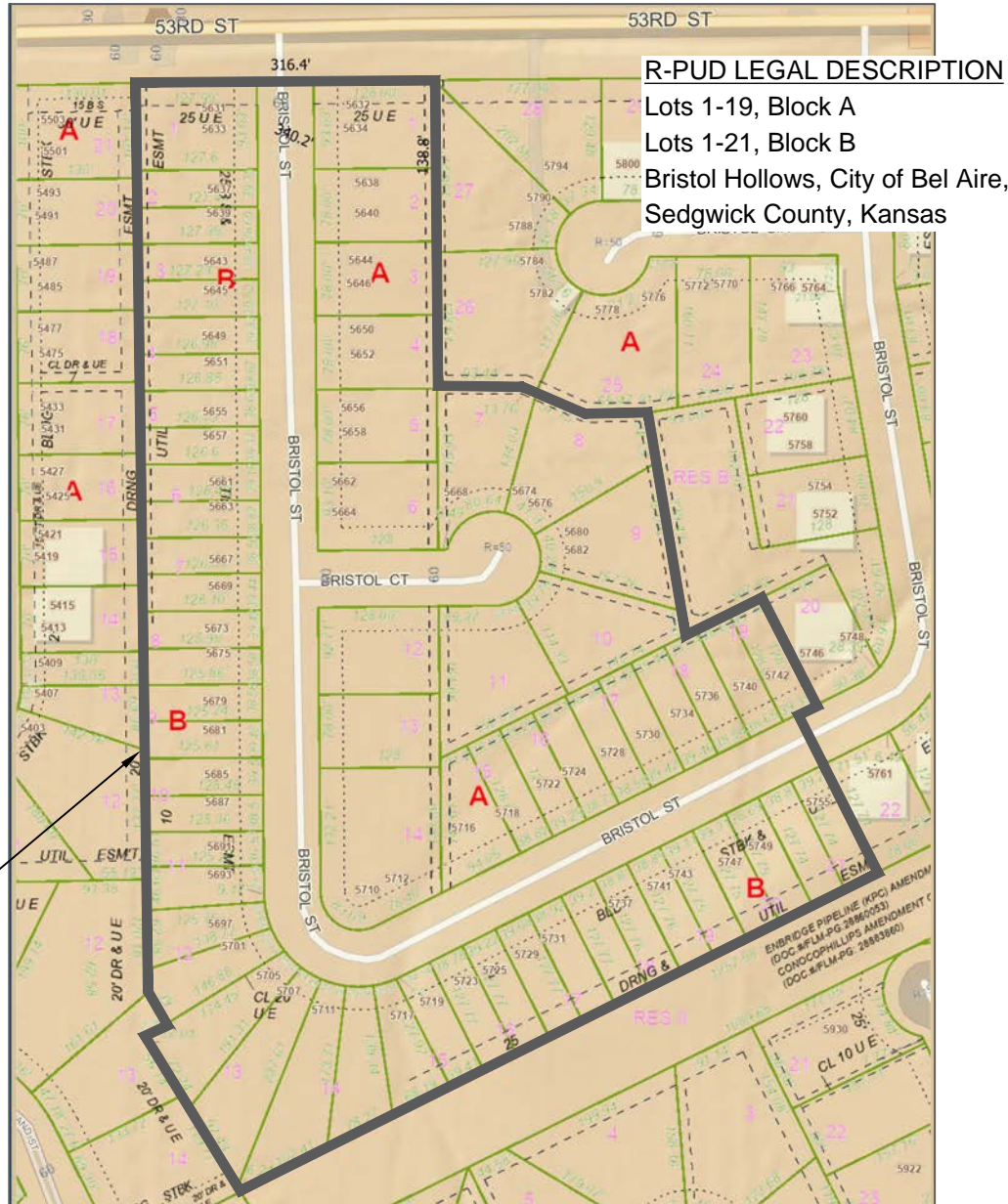
92 APPROVED AS TO FORM:  
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97 Maria A. Schrock, City Attorney  
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# EXHIBIT A

## BRISTOL HOLLOWES ADDITION R-PUD

1" = 200'

Proposed  
R-PUD Area



These additional documents are incorporated by reference herein and to the Bristol Hollowes Addition R-PUD:

- Restrictive Covenants
- First Amendment to the Original Development Agreement
- Wall Agreement
- Easement Agreement Re: Access to Power Meter

### R-PUD INFORMATION

Gross Area of PUD: 13.1 Acres  
 Total Number of Lots: 40  
 Total Number of Dwelling Units: 80  
 Predominant Lot Width: 78 feet  
 Minimum Lot Width: 25 feet (measured at setback)  
 Predominant Lot Area: 9,980 sf  
 Minimum Lot Area: 4,000 sf

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1995 Midfield Road  
 Wichita, KS 67209  
 (316) 264-8008

BRISTOL HOLLOWES R-PUD  
 City of Bel Aire  
 Sedgwick County, Kansas

R-PUD EXHIBIT

FIGURE NUMBER

SHEET  
 NUMBER 1 of 1

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR  
BRISTOL HOLLOWS PHASE II**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND DISCLOSURES FOR Bristol Hollows Phase II ("Declaration") is made effective the 23<sup>rd</sup> day of December, 2023, by Double Down Developers, LLC, a Kansas limited liability company (hereinafter referred to as the "Developer").

WITNESSETH, THAT:

WHEREAS, Developer deems it desirable to adopt and establish covenants, conditions and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined); and

WHEREAS, it is desirable to establish binding covenants, conditions and restrictions applicable to the Property for the proper development thereof, adequate maintenance and government of the Common Area (as hereinafter defined), and to specify the rights and obligations of the Developer and the Owners (as hereinafter defined); and

WHEREAS, the Association (as hereinafter defined) will be incorporated for the purpose of exercising certain powers and functions hereunder; and

WHEREAS, Developer will convey title to all of the Lots (as hereinafter defined), subject to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Developer hereby covenants, agrees and declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which are hereby declared to be for the benefit of all of the Property described herein and the Owners thereof, their successors and assigns.

**ARTICLE I**  
**DEFINITIONS**

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

1.1 “Articles” shall mean the Articles of Incorporation of the Association which shall be filed in the office of the Secretary of State of Kansas, as such Articles may be amended from time to time.

1.2 “Association” shall mean and refer to the Bristol Hollows Homeowners’ Association (or such other corporate name as Developer shall hereafter select), a nonprofit corporation, incorporated under the laws of the State of Kansas, its successors and assigns.

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

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

1.5 “Bylaws” shall mean the Bylaws of the Association as such Bylaws may be amended from time to time.

1.6 “Common Area” shall mean those portions of the Property for the common use and enjoyment of the Members of the Association, as follows as the same may be modified from time too time by additions or removals as permitted hereunder:

Reserve B, Bristol Hollows Addition, City of Bel Aire, Sedgwick County,  
Kansas

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

1.8 “Developer” shall mean Double Down Developers, LLC, a Kansas limited liability company, and its successors and assigns. If Developer assigns less than all of its rights, obligations and interests to one or more entities, the term “Developer” as used herein shall thereafter refer to both the Developer and all successor developers unless the context clearly means otherwise.

1.9 “Lot” shall mean and refer to each platted Lot within the Property upon which there may be constructed a residence; provided, that where land has been attached to or detached from any Lot, the enlarged or diminished Lot shall be deemed to be a Lot hereunder; provided, if two or more Lots are combined into a single residential site assessments or charges hereunder shall continue to be assessed or changed for each platted Lot.

1.10 “Member” shall mean and refer to every person or entity who or which is an Owner of a fee or undivided fee interest in any Lot, but not including any Owner who has sold their interest in a Lot under an executory contract and no longer has possession of the Lot. During the time any such executory contract is in force, the contract vendee shall be considered to be the Member rather than the contract seller. When more than one person holds an interest in a Lot, all such persons shall be Members.

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

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

1.13 “Property” shall mean and refer to all of the property described as follows, together with such other land as may be added and excluding land removed hereunder by the terms of this Declaration:

Bristol Hollows Addition, City of Bel Aire, Sedgwick County, Kansas

1.14 “Structure” shall mean and include any thing or device, the placement of which upon any Lot may affect the drainage or appearance of such Lot, including, by way of illustration and not limitation, any building, garage, gazebo, porch, shed, greenhouse or bathhouse, covered or uncovered patio, screening materials, swimming pool, tennis court, light pole, clothesline, sandbox, 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 any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the flow of surface water from, upon or across any Lot, in accordance with the master drainage and grading plan for the Property as referenced below, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot, and any change in the grade of any Lot other than in accordance with drainage guidelines, standards and plans established by the Developer, the appropriate Design Committee, the municipality having jurisdiction over the Property or the Lot-specific drainage plan referenced in Section 5.24, whichever are most stringent.

## **ARTICLE II**

### **MEMBERSHIP AND VOTING RIGHTS**

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

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

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

B. Any Member 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 Member to vote and the right to participate in meetings and proceedings of the Association.

C. Notwithstanding the foregoing, Developer 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 and the laws of the State of Kansas, as it deems advisable for any meeting of Members with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

2.3 Formation. Developer shall form the Association promptly following recordation hereof and shall convey legal title to the Common Area to the Association. Developer shall convey the Common Area to the Association by special warranty deed, in an "AS IS" condition subject to all easements, rights-of-way, mortgages, encumbrances, and liens for non-delinquent ad valorem taxes and special assessments. At such time as residences are occupied on five Lots, the Developer shall appoint residents to serve on the Board along with a representative of Developer. Promptly thereafter, the Board shall elect the officers and adopt the bylaws of the Association. The Board shall diligently carry on the duties of the Association as specified in this Declaration.



## **ARTICLE III**

### **PROPERTY RIGHTS IN THE COMMON AREA; MAINTENANCE**

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

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

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

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

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

E. The right of the Board to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;

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

G. The covenants and restrictions contained herein.

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

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

3.4 Subsidy of Common Area Operations. As of the date Developer conveys the Common Area to the Association, Developer will own most of the Lots. It is in the Developer's interest, as well as the Association's interest, that sufficient revenues be generated from assessments under Article IV of the Declaration, so that the Common Area owned by the Association, including improvements thereon, and street rights-of-way, may be maintained and operated in a reasonable fashion for the use and benefit of the Members of the Association. Developer hereby agrees to supplement the Association revenues by paying, upon reasonable notice, an amount equal to the difference between (a) the amount of the revenue required by the Approved Budget then in effect for the maintenance and operation of the Common Area and the street rights-of-way for the applicable period, and (b) the aggregate amount of revenues to be received by the Association due to the timely payment of assessments by all non-exempt Owners during the applicable time period, plus the amount of revenue reasonably expected to be received during such time period as transfer assessments under Section 4.2 B of the Declaration. Promptly following appointment of the Board as referenced in Section 2.3 above, the Developer and the Board shall establish a budget of the Association for maintenance and care of the Common Area and street rights-of-way for the portion of the calendar year following establishment of such budget, which budget is herein referred to as the "Approved Budget." For each subsequent calendar year, the Association shall propose to the Developer on or before December 1 of each subsequent calendar year a budget for the next ensuing calendar year. The intent of Developer and the Association is that the Approved Budget shall be adequate, in all respects, for the reasonable maintenance and operation of the Common Area, as well as the ability to provide debt service for payment of mortgage financing established by Developer for construction of improvements within the Common Area. Developer shall respond as soon as reasonably possible to the each budget proposed by the Association, and, thereafter, the Association and Developer shall endeavor in good faith to mutually agree upon the Approved Budget for such year; provided, if such parties are unable to so agree by January 30 following submission of the proposed budget to Developer, the Approved Budget in effect for the immediately preceding calendar year shall be the Approved Budget for the new year. Notwithstanding anything appearing herein, Developer shall have no obligation to pay any portion of the costs incurred by the Association for the construction of improvements within the Common Areas or street rights-of-way or for hiring or engaging third parties to manage or otherwise render services to the Association, other than for lawn/water sprinkler system care. Developer and the Association hereby agree that Developer's obligation to supplement Association revenues as provided in this Section above shall discontinue as of the date within the calendar year during which the amount of revenues required by the Approved Budget will be generated due to the timely payment of assessments by non-exempt Owners during such calendar year, together with the reasonably anticipated transfer assessments referred to above.

3.5 Alteration of the Common Area. Notwithstanding anything to the contrary provided herein, the Developer 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 or reconfiguration, 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 Member shall have a nonexclusive easement and right of use or access thereto as provided in Section 3.1 above.

3.6 Common Area and Arterial Street Rights-of-Way, Amenities, Improvements and Maintenance. Developer shall either pay for or finance (as referenced in Section 9.2 below) the cost of constructing or installing the original improvements and amenities to the Common Area and the arterial streets located along perimeter of the Property but not streets within the Property. Developer shall construct or install the improvements or amenities listed on Exhibit "B" attached hereto; provided, Developer and/or the Association may install additional amenities or improvements as either elect from time to time. Developer, its contractors and any subcontractors, and the employees thereof, shall have an easement and right of access upon the Common Area for the construction and installation of Common Area improvements and amenities. Following completion of the construction and installation of such amenities and improvements to the Common Area and/or the aforesaid street rights-of-way, then, the Association shall inspect the same and provide Developer in writing within ten (10) days following Developer's request for such inspection, a detailed listing of any defects concerning any such amenities and improvements which were not constructed or installed in a reasonable condition. Other than any matters timely objected to in writing by the Association, such amenities and improvements shall be deemed to be unconditionally accepted by the Association. Due to the timing of the occurrence of the inspection of the amenities or improvements, it may not be appropriate for Developer to make corrections at that time, particularly to lawn or landscaping items, in which case, Developer shall make the corrections and improvements during the next growing season or when such corrections are otherwise appropriate. *From and after the initial request to an officer of the Association for inspection of the Common Area improvements and amenities installed or constructed by Developer, the Association shall, subject to the Developer's payment obligations under Section 3.4 and its obligation for construction and installation specified on Exhibit "B" hereto, be solely and fully responsible for all costs of owning, maintaining and operating the Common Area, the aforesaid street rights-of-way, and improvements thereon, including, but not limited to, all fertilizing, watering and replacement of lawns, shrubs, flowers, plantings and trees following the initial planting thereof, the mowing of lawn areas, payment of taxes and assessments, payment of liability and property insurance premiums, and lake and swimming pool operations, maintenance, repairs and replacements of the improvements, if applicable.* **The Developer will not mow or maintain the Common Area or the street rights-of-way, as applicable, following the date of its initial request for inspection of improvements and amenities thereon by the Association.**

## **ARTICLE IV**

### **COVENANTS CONCERNING ASSESSMENTS AND LIENS**

4.1 General Assessments. For the purpose of providing funds for the operation of the Association, and for the operating, maintaining, caring, insuring, improving and conducting such other activities and taking such other actions pertaining to the Common Area as the Association shall deem appropriate, and to afford the Association the means and resources necessary to carry out its rights, duties and functions, the Board shall have the right, in each year, but subject to the exemptions provided below, to assess against each Lot and each Owner thereof, a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, quarterly or monthly as specified by the Board from time to time. Initially, the general assessment shall be in the amount of Fifty Dollars (\$50.00) per month to be paid on the first day of each calendar month commencing January 1,

2024; assessments for any partial year shall be prorated. Subject to the exemptions specified herein, the obligation of each Owner to pay assessments hereunder shall commence on the date title is conveyed to such Owner and is not dependent upon there being a residence erected thereon.

#### 4.2 Basis of Assessment; Exemption; Transfer Assessment; Proration.

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 Developer in connection with the Common Area, Developer, 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 Developer or such contractor holds legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor and shall cease if the contractor occupies the same as a residence).

B. 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 an amount equal to One Hundred Dollars (\$100.00); provided the requirement to pay such a fee shall not apply to either:

i. the transfer by Developer to an affiliated entity, or the transfer of Developer's interest as developer 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.

C. 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 subparagraphs A and/or B immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable assessment shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner.

#### 4.3 Limitations on General Assessments.

A. The maximum general assessment for any year may not be increased for any subsequent year by the Association, to an amount which is more than Five percent (5%) compounded above the annual assessment for the previous year, without a vote of the membership of the Association.

B. The general assessment for any year may be increased to an amount greater than that permitted by subparagraph A of this Section only upon the affirmative vote of the Members holding more than two-thirds of the total authorized votes represented at a duly called meeting who are voting in person or by proxy.

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

4.4 Special Assessments. In addition to general assessments, the Association may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot 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 two-thirds of the Members present, 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 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.

4.5 Collection and Expenditures. The Association shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration, 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 Association shall have the authority to expend all monies collected from such assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association as provided for in this Declaration and the Articles and Bylaws of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall the Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.6 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.

4.7 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.

4.8 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 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 Association 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.

4.9 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 Association. The Developer 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 fifteen (15) years following the filing of the Notice of Delinquency; provided, if at the expiration of such fifteen (15) 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.

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 mortgage which has been, or may hereafter be, given in good faith and for value on any interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at foreclosure shall be bound by the restrictions, assessments and liens set out in this Declaration, not including, however, any assessment or lien arising prior to the foreclosure sale.

4.11 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.

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.

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 IV.

## **ARTICLE V**

### **USE, OCCUPANCY AND CONDUCT RESTRICTIONS**

5.1 General. The Property is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection 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 and Common Area.

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

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

Exterior walls and facings of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, stucco, wood siding, wood paneling, glass, glass blocks, vinyl or steel siding, or any combination thereof. Any residences constructed on a Lot shall, except as otherwise approved by the New Construction DRC, not contain less than the number square feet of finished floor area, exclusive of the basement, porch and garage shown to be applicable for such Lot on the copy of the plat of the Property attached hereto as Exhibit "A." Each residence shall, unless otherwise approved by the New Construction DRC, include a poured concrete basement which shall contain a floor area comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages. All roofs on all building improvements on any Lot shall be wood, tile or Approved Composition. As used in this Declaration, "Approved Composition" shall mean Heritage II Weatherwood or such other equivalent composition roofing materials as are approved in writing by the New Construction DRC from time to time.

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

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

i. Front yard areas, exclusive of improvements, shall be at least eighty percent (80%) grass.

ii. In the event of the construction of any retaining walls the plan and materials utilized must be previously approved in writing by the appropriate Design Committee.

iii. All basketball backboards shall be either white or glass and shall be placed or installed only in the rear yard, unless otherwise approved by the Association DRC. All basketball backboards and supports shall be approved by the Association DRC prior to installation. *No temporary or moveable basketball pole/backboard/goals shall be placed or allowed to the front of the residence, whether on the driveway, street, or patio area or in the yard.*

iv. All recreation and play equipment shall be located in the rear of any Lot.

v. Detached outbuildings, including garages and storage sheds, may be permitted if specifically approved by the appropriate Design Committee as to



design, materials and location on a Lot; provided, no such sheds shall be constructed on Wrought Iron Fence Lots. The exterior of detached outbuildings constructed on a Lot shall be constructed with the same material as the residence.

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

vii. Dog runs must be screened from view from neighboring homes with fencing or other appropriate material.

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

ix. Any temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or "bubble" type shall be deemed a Structure that is subject hereto.

x. No window shall contain any reflective material such as aluminum foil.

xi. Pool buildings or gazebos may be constructed within any rear yard setback area applicable to the Lot if so, approved by the appropriate Design Committee; provided that the same shall not exceed one story in height and are allowed by applicable building codes.

xii. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring Lots, and no stack shall exceed six feet (6') in height.

xiii. All forms of sculpture or "yard art" must first be approved by the Association DRC.

xiv. As soon as practicable, but in any event, no later than the planting season immediately following completion of a dwelling on a Lot, the Owner thereof shall plant a lawn and at least four (4) perennial shrubs and/or bushes and trees on the Lot. Per the FIRST AMENDMENT TO AGREEMENT CONCERNING THE DEVELOPMENT OF THE BRISTOL HOLLOWS, AND ADDITION TO BEL AIRE, SEDGWICK COUNTY, KANSAS, each Lot is to have a minimum of one (1) tree planted in the front yard of each Lot and the trunk of each tree should be a minimum of two (2) inches in diameter. Corner Lots require a minimum of three (3) trees planted on each Lot.

xv. Pad elevations and all exterior drainage shall be verified by Developer'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.

xvi. Mailbox Structures, other than cluster mail boxes installed by the postal service, shall be approved by the appropriate Design Committee prior to construction.

xvii. Trash and refuse container storage areas shall be installed at a location approved by the appropriate Design Committee and shall be screened in a manner approved by the appropriate Design Committee.

xviii. All lawns and planting areas on the Lots shall be properly irrigated either by well or by City water.

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

5.4 Damage to Common Area, Etc., Prohibited. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area, street rights-of-way, the residence or Lot of any other Owner. Specifically, each Owner shall repair any damage sustained to any other Lot, Common Area or street right-of-way in connection with the construction of Structures on such Owners' Lot, including, but not limited to, damage to lawn areas, landscaping and sprinkler systems as a result of the installation of sanitary sewer or heat pump lines or other construction or excavation activities. Owners are hereby advised that DIG SAFE (a service which may be consulted in advance of excavation to locate existing utility lines) does not identify sprinkler system lines or other underground electrical or plumbing lines which have been installed.

5.5 Residences. No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new duplex residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the appropriate Design Committee 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 New Construction DRC.

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

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

5.8 No Businesses Allowed. Except as otherwise specified in this Declaration or as authorized herein or by the Board, no retail, wholesale, manufacturing or repair business of any kind, shall be permitted on any Lot or in any residence or appurtenant Structure erected thereon,

even though such activity does not include the employment of any additional person or persons in the performance of such services. The following home occupations are hereby approved: residential home building contractors; Amway, Avon and similar sales representatives; child care; and realtors, so long as insubstantial traffic (that is, except in circumstances otherwise determined by the Board to be appropriate due to appropriate parking limitations, no more than four vehicles parked at the residence by visitors in relation to such business activity at any one time) is associated with such activities.

5.9 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.

5.10 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 Developer may install for construction, administrative and sales purposes a trailer or trailers upon a Lot(s).

5.11 Animals. No birds, animals or insects, except dogs, cats or other household pets, shall 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 on the Property without the express written consent of the Board. The Board may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot, and the Owners shall strictly comply therewith. 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. Owners must prevent such animals from barking or making other noises at any time which the Board determines are annoying or a nuisance to neighbors or those using the Common Area.

5.12 Signs. Except as authorized by the Board, and except for those installed by Developer, its marketing representatives or builders or contractors as authorized by Developer, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; 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.

5.13 Antennas. Except as authorized by the Association DRC, 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 Association DRC. 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 Association DRC 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.

5.14 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, 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.

5.15 Requirement to Keep Lot in Good Order and Repair. The Association shall keep all Lots and all improvements therein or thereon, in good order and repair, including, but not limited to, the seeding, irrigation and mowing of all lawns, the pruning and cutting of all trees and shrubbery, 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 Property.

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

5.17 Boating; Lake Use. No boat (motorized or not), raft, canoe or surfboard shall be operated or stored upon any body of water within the Common Area.

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

5.19 Fences.

A. Developer 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 Developer, 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 Common Area. With respect to any Lot on which Developer 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 Developer or the Association DRC.

B. Except as provided in paragraph A immediately above and subject to paragraphs C and D immediately below, all Lots may utilize fences made of black wrought iron. Fencing may not be installed to the front of a residence constructed on a Lot.

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

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

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

5.21 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 drainage and grading plan relating to the Lot.** Developer has established a master drainage and grading plan for the Lots, a copy of which is recorded in the office of the register of deeds, and each Owner shall strictly comply with the same. Attached hereto as Exhibit "C" is an Example of Lot Drainage Requirements which illustrates drainage requirements applicable to typical residential lots (including those on which view out and walk out basements are constructed) and the location of grading and drainage pins at the rear lot lines to establish that the minimum required grading levels for the rear yard are in place. 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 Association DRC or persons designated by the Association DRC shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination by the Association DRC 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 Developer owns a Lot, the Developer (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Association DRC under this Section 5.24 upon the specific request of any Owner and, in the event Developer so overrides a specific decision of the Association DRC, any subsequent reference in this Section 5.24 to the Association DRC shall refer to the Developer in lieu of the Association DRC as to the specific decision in question. In the event at any time the Association DRC determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Association DRC shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If fifteen (15) days after the notice of such violation, or such additional time as may be specified by the Association DRC, the Owner of such Lot shall have not have taken reasonable steps to correct the same, the Association DRC shall have the right, through its agents and contractors, to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such compliance and pay the Association a fee equal to 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 IV hereof. Developer recommends that any time a Lot is surveyed by an Owner, whether in connection with mortgage financing or otherwise, that the surveyor verify that the grading and

drainage pins located in the rear of the Lot are at the elevations required by the master drainage and grading plan referred to above. It shall not be the Association's responsibility and Developer's obligation to enforce compliance with the master drainage and grading plans. The Design Committees and the Developer 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 appropriate Design Committee or the Developer not requiring a lot drainage and grading plan or compliance therewith or for the quality or compaction of any soil.

5.22 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 Developer, or another party, has caused the same to be removed from the flood plain by increasing the elevation thereof with fill as required by the City of Wichita, Kansas, the Kansas Department of Water Resources, 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 Developer nor the Association, building contractor or brokers involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

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

5.24 Airport. The Property may be located in the vicinity of an airport. Each purchaser of a Lot assumes that risk (if any) associated therewith.

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

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

5.27 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 or the Association DRC, because such Structure, planting material or other item obstructs any view from such Owner's Lot.

5.28 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, by reason of the aforesaid permit, regulations, rules and ordinances and shall indemnify and defend Developer 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.

5.29 Water Levels in Lakes and Ponds. There is no assurance that lakes, ponds and other bodies of water within the Property, if any, shall continue in the future to contain water levels consistent with the levels existing on the date hereof and, in fact, such lakes, ponds and bodies of water may at some point in the future become dry or substantially empty of any water. **Neither Developer, the Association, the Board nor any officer or employee of Developer or the Association shall have any liability or responsibility to Owners for any change in the water levels in any such lakes, ponds, or bodies of water, including if such bodies of water become dry or substantially empty of water.**

5.30 Approved Builder; Marketing Fee. Any Owner desiring to construct the initial residence and related improvements on a Lot must obtain Developer's written approval concerning the building contractor constructing such residence and related improvements, which approval shall be made in Developer's sole discretion based on the experience and history of the contractor in connection with construction of residences within subdivisions of comparable quality with the Property and such contractor's financial condition. Each approved builder may be required to execute a builder's agreement on terms satisfactory to Developer prior to commencement of construction. Each Owner is hereby informed that, among other things, an approved builder is required to pay a marketing fee (the "Marketing Fee") based on the total consideration to be paid and delivered by Owner for the construction of the initial residence, garage and related improvements on the applicable Lot and if such builder fails to pay the same, the Owner of such Lot shall be required to pay the delinquent amount. The Marketing Fee shall be paid at the time of substantial completion of such initial residence, and related improvements or no later than five (5) days prior to the occupancy thereof, whichever occurs first. The specific

party to be paid the Marketing Fee and the calculation of the Marketing Fee is included as part of the initial sales contract concerning a Lot. *Any Owner, or prospective Owner, desiring further information concerning a Lot should contact the marketing representative for the Property.*

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

5.32 Laundry. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association.

5.33 Wells for Common Area. Developer reserves the right to dig one or more water wells to maintain the water levels in the common area. The cost to install and maintain shall be paid by the Association.

## **ARTICLE VI**

### **THE ASSOCIATION**

#### **6.1 Powers, Duties and Rights.**

A. The Association shall have the rights and powers as set forth in its Articles 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.

B. The Association shall maintain, fertilize, and mow the portions of the Common Area which are to be maintained by it hereunder, the portions of the arterial public street rights-of-way adjacent to the perimeter of Property, and the lawns of every Lot. The Association shall maintain and fertilize all trees and shrubs on each Lot. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer or the Association.

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

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

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

F. The Association, through the Board, shall have the right to adopt, and modify from time to time, such rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Property and for the health,



comfort, safety, enjoyment and general welfare of the Owners and occupants of Lots and those using the Common Area.

G. The Association, through the Board, shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area to be maintained by it hereunder.

H. The Board may select from time to time a single company to provide trash removal service for all residences on the Lots and shall post conspicuous notice of such decision within the Property. Within ninety (90) days after such company is selected, each Owner shall begin to utilize the company identified by the Board to provide trash removal service at such Owner's Lot and continue to use such company exclusively until such time as the Board designates a different trash service company or notifies the Owners that it is no longer necessary for all Owners to utilize the same trash removal service company. Each Owner shall be responsible for paying all costs and fees associated with trash removal services related to such Owner's Lot. In the event at any time and from time to time the Board determines to change the company providing such trash removal service for the Lots, the Board shall post conspicuous notice of such change at least ninety (90) days in advance of such change and on or before the expiration of such ninety (90) day period, each Owner shall switch its service exclusively to the other company specified by the Board.

I. The Board shall have the authority to assess fines for any violation of the provisions contained in this Declaration. Prior to assessing any fine, the Board shall mail written notice to the last address known to the Board concerning the noncompliant Owner. If the noncompliant Owner fails to cure the violation within fifteen (15) days following the mailing of such notice by the Board or if there is a recurrence of the violation during that fifteen (15) day period, then in addition to any other liability or obligation arising under the Declaration, the Board may assess a fine against the noncompliant Owner and his or her Lot in an amount determined by the Board to be appropriate in its discretion and until paid in full, the fine shall accrue interest at the rate of fifteen percent (15%) per annum, shall constitute a lien on the noncompliant Owner's Lot, and shall be subject to enforcement and foreclosure in the same manner as a special assessment as referenced in Article IV of this Declaration.

J. The Board shall have the right to employ on behalf of the Association third parties as security and/or enforcement personnel (which personnel shall have the right to determine whether violations of rules or regulations have occurred).

6.2 Operations and Expenses. The Association shall establish such committees as may be provided for in its Bylaws, and the Board may engage accountants, legal counsel and other consultants as may be reasonably necessary for the discharge of its duties hereunder. So long as Developer is required to make subsidy payments pursuant to Section 3.4 hereof, the Board must obtain Developer's written consent prior to incurring any costs for such parties which are not included in the Approved Budget.

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

6.4 Repair and Restoration of Improvements on Common Area. Should any improvements on any portion of the Common Area, or any part or portion thereof, which is to be maintained by the Association hereunder, be damaged or destroyed by fire or other casualty or by intentional mischief, the Association shall be responsible for the cost and expense of repair and restoration, and, so long as there are sufficient insurance proceeds collected as a result of such damage or destruction, the same shall be done substantially in accordance with the original plans and specifications for the improvement of same. The repair and restoration work referred to in this Section shall be commenced promptly after the happening of the destruction or damage occasioning the same, and once commenced, the same shall be pursued diligently to completion. Notwithstanding the foregoing, in the event that any such improvements on the Common Area shall be damaged or destroyed through the intentional misconduct or negligence of an Owner, or such Owner's family members or invitees, including, but not limited to, failing to correct faulty drainage or improper use of weed killer, such Owner shall pay on demand the full cost of replacement or repair thereof.

6.5 Providing Grading Information to Owners; Enforcement. The Association shall designate a committee of Members to meet with new Lot Owners for the purpose of informing them regarding grading and drainage matters concerning the Lots. Such educational process is vital in order to avoid water drainage problems within the Property. Either before or promptly following the purchase of a Lot, each person must contact a representative of the Association and ask to be informed concerning grading and drainage matters relating to the Property. The Association shall strictly enforce compliance with grading and drainage requirements provided for in Section 5.24 hereof.

6.6 Opposition To Zoning and Other Matters. The Board, any member thereof and the Members of the Association shall not express any opinion on behalf of the Board or the Association pertaining to any applications or requests concerning rezoning, community unit plan approval or amendment, variances, or other land use activity relating to any land in the vicinity of the Property. This prohibition is necessary due to the fact that not all Board members or Members will have the same opinions concerning the applicable request or application. Nothing herein is intended to restrict any Member or member of the Board from expressing his or her personal opinions without indication that such opinions represent the opinion of the Association or the Board.

## **ARTICLE VII**

### **EASEMENTS AND ACCESS CONTROL**

7.1 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.

7.2 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.

7.3 Easements in Favor of Developer and Association. Developer specifically reserves unto itself, its successors and assigns, and for the Association, in connection with the use, operation, construction of improvements and amenities, and maintenance of the portions of the Common Area to be maintained by it hereunder, together with arterial 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, for the purpose of constructing, maintaining, moving, 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, Developer 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. Developer 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. Developer, 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 Developer or its successors and assigns.

## **ARTICLE VIII**

### **DESIGN COMMITTEES; ARCHITECTURAL CONTROL**

8.1 Committees. Two Design Committees shall have responsibility for the review, approval or disapproval of plans relating to the construction of Structures on each Lot. One committee shall be the New Construction DRC, which shall review, approve or disapprove all matters pertaining to the construction and completion of the initial residence and related Structures on each Lot. The second committee, the Association DRC, shall review, approve or disapprove all specifications, plans and other matters pertaining to fencing; drainage matters as referenced in Section 5.24 above and elsewhere; and (on a Lot by Lot basis) following completion of the initial residence and related Structures on a Lot, all specifications, plans and other matters for remodeling the initial residence and related Structures, including landscaping, and any additional new Structures to be constructed on such Lot.

8.2 Membership.

A. The original members of the New Construction DRC shall be up to three (3) persons, to be appointed by Developer. Upon the death or resignation of any member of the New Construction DRC, or in the event Developer desires to remove any member, Developer shall appoint a successor. The decision of a majority of the New Construction DRC shall be binding; provided, the New Construction DRC may delegate its rights and responsibilities hereunder to one or more of its members from time to time. Developer may relinquish its rights under this paragraph by executing and recording in the real estate records a written instrument giving notice of its intent to do so, and providing a copy thereof to an officer of the Association; in such event, the Association shall have the authority of Developer under this paragraph. The New Construction DRC may delegate its rights and responsibilities on a limited basis to the Association DRC from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation.

B. The original members of the Association DRC shall be up to three (3) persons, to be appointed by the Board following its establishment pursuant to Section 2.3 above. On the death or resignation of any member of the Association DRC, or in the event the Board desires to remove any member, the Board shall appoint a successor. The decision of the majority of the Association DRC shall be binding; provided the Association DRC may delegate its rights or responsibilities hereunder to one or more of its members from time to time.

8.3 Approval Required of Plans and Specifications. Except as otherwise specifically provided in this Declaration, prior to construction of the initial residence and related Structures on a Lot, no Structure shall be commenced, erected, placed, moved on or permitted to remain on such Lot, unless plans and specifications, grading elevations, square footage, exterior materials, exterior lighting, location, general landscaping plans, and exterior color scheme, therefor shall have been submitted to and approved in writing by the New Construction DRC. Subsequent to construction and completion of the initial residence and related Structures on a Lot, no existing Structure upon any Lot may be remodeled or altered in any manner as materially changes the

exterior appearance thereof (including exterior color scheme) or Lot drainage and grading plan, nor shall any new Structure be placed on such Lot, unless plans therefor shall have been submitted and approved in writing by the Association DRC. The plans and specifications shall be in such form and shall contain such information as may be required by the appropriate Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (ii) a finished grade plan for the particular Lot or Lots as prepared in accordance with the master drainage and grading plan. Plans and specifications shall be deemed to be submitted to the Association DRC at such time as the Owner requesting such approval shall deliver the same to a member of such committee and shall have obtained a written receipt from such member acknowledging receipt of the same. The Association DRC (but not the New Construction DRC) shall be deemed to have approved plans and specifications for which an Owner shall have requested approval if it has not notified such Owners of disapproval or the need for additional time for consideration within thirty (30) days following Owner's submittal to such committee. No approval of the New Construction DRC shall be deemed or implied to have been given hereunder; actual written approval from such committee is required.

8.4 Mailboxes. All mailboxes will be a "gang box" style, and will be installed by the Developer.

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

8.6 Rules and Statements of Policy. The Design Committee, or either of them, may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the appropriate Design Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the appropriate Design Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the appropriate Design Committees' discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the appropriate Design Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter; provided, that (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (ii) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

8.7 Right Of Inspection. Representatives of the Board or appropriate Design Committee 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, construction, or alteration of Structures thereon are in compliance with the provisions hereof, and neither the appropriate Design Committee, 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.

8.8 Violation. If any Structure shall be constructed, remodeled, altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the appropriate Design Committee pursuant to the provisions of this Article VIII, such construction, remodeling alteration, erection, maintenance, placement or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Association, any such Structure so constructed, remodeled, altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation. If, fifteen (15) days after the notice of such a violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the violation, the Association, after approval by a two-thirds decision of the Board, shall have the right, through its agents, contractors and representatives to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the violation and such Owner shall pay the Association for the cost thereof, together with an additional amount equal to twenty percent (20%) of such cost, within ten (10) days following demand therefor, which payment shall be a binding personal obligation on such Owner, and the Board may establish a special assessment and lien on such Lot for such cost and charge, together with interest thereon at the rate specified in Section 4.12 above, on such Lot for the cost thereof and enforce the same as provided in Article IV hereof. The lien established as a result of this Section shall be superior to all liens and encumbrances which may thereafter arise, excepting liens for taxes and other public charges which are by applicable law made superior.

8.9 No Liability. Neither of the Design Committees, the Developer, the Association, the Board, nor any officer, director, member, representative, designee, agent or employee thereof, shall be personally liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any mistake in judgment, negligence, nonfeasance, performance or nonperformance of any duties, the approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions pursuant to this Declaration, guidelines or the Associations' Articles or Bylaws, responsibilities or functions under this Declaration, including, but not limited, to this Article and Section 5.24 hereof, or for any defect in any Structure constructed from any approved plans and specifications. Every person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Developer, the Association, the Design Committees, the Board, or the officers, directors, members, employees, and agents of any of them to recover any of the aforesaid 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, nonfeasance, performance, nonperformance, approval, disapproval or failure to approve 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 IX**

### **NOTICE OF POSSIBLE SPECIAL ASSESSMENTS; AMENITY FINANCING**

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

9.2. Amenity Mortgage Financing. Notice is hereby given that Developer may obtain conventional mortgage secured financing in order to pay the cost of installing or constructing amenities within the Common Area for the use and benefit of the Members. Assessments or funds collected by the Association under Article IV and Section 3.4 hereof shall be utilized for repayment of such financing in accordance with the terms of such financing.

## **ARTICLE X**

### **ADDITIONAL LAND**

Developer may in its discretion, from time to time, during the twenty (20) year period following the date hereof, annex additional real property, including additional Common Area, into the Property, and thereby subject the same to 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 the County in which the Property is located, of an instrument expressly stating an intention to so annex and describing such additional property to be so annexed. During the twenty year period commencing with the date of the recordation of this Declaration, Developer, its successors and assigns, may annex such additional real property in its absolute discretion. From and after the expiration of such twenty (20) year period, such additional land may be annexed; provided that such annexation is approved by a majority of the Members of the Association in attendance at a special or annual meeting of the Members.

## **ARTICLE XI**

### **MISCELLANEOUS**

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

11.2 Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the construction, use or occupancy 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 construction, 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.

11.3 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.



11.4 Assignment of Powers. Any and all rights and powers of Developer provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Developer to any third party and/or to the Association. The Developer'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.

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

11.6 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.

11.7 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.

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

11.9 Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Developer, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years each, unless an instrument, signed by Owners of not less than seventy-five percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

11.10 Amendments. Amendments, including waivers, modifications, alterations, removals, changes and additions, to this Declaration may be made by Developer, or its successors and assigns, in its sole discretion, from time to time, so long as Developer (or its successors and assigns) retains ownership of a minimum of fifty percent (50%) of the Lots within the Property. Following the date Developer, its successors and assigns, no longer owns a minimum of fifty percent (50%) of the Lots, any provision contained in this Declaration may be amended, repealed, or additional provisions added to this Declaration, as follows:

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

B. Resolution. A resolution adopting a proposed amendment may be proposed by the Board or Developer. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners casting not less than two-thirds (2/3) of the aggregate number of votes cast by the Owners present at such meeting. Such votes may be cast in person or by proxy as provided for herein and in the Bylaws of the Association.

A copy of each amendment provided for in this Section shall be filed of record in the Register of Deeds for the County in which the Property is located. With respect to amendments, following the date the Developer no longer owns a minimum of fifty percent (50%) of the Lots, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the Bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

Notwithstanding the foregoing, so long as Developer, or any assignee thereof, owns one (1) Lot, any such amendment (including, but not limited to, those modifying any "Construction Requirements" contained in Section 5.2 above) shall require the written consent of Developer in order to be effective. No amendment by the Owners materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

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

11.12 Enforcement and Arbitration.

A. The covenants set forth herein shall run with the land and bind each Owner, its successors and assigns, and all parties claiming by, through or under each Owner, and shall be taken to hold, agree and covenant by the Owner of each Lot, its successors and assigns, to conform and observe this Declaration and each and every term and condition hereof (but no restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during the term of its, his or their ownership of a Lot).

B. The Developer, the Owner or Owners of any of the Property and the Association shall have the right to seek enforcement of and/or to prevent the breach of the terms and conditions set forth herein and any rules or regulations established as permitted herein. Any action relating to any rights and obligations arising under, or in connection with, (a) this Declaration, including, but not limited to, an action to seek enforcement of and/or to prevent the breach of any of the covenants and restrictions contained herein, (b) pertaining to a Lot or all or any portion of the Common Area, or the condition thereof, and (c) any claim asserted by the Association, an Owner or Owners, former Owner(s), and contract purchasers, against Developer for any reason and/or any

real estate broker, agent or sales person participating in the sale of a Lot, shall be resolved solely and exclusively by arbitration in accordance with the Kansas Uniform Arbitration Act (the "Act"), as modified from time to time, in accordance with the procedure set out below. However, the provisions of this Section 11.12 shall not either prevent a party from obtaining a temporary injunction from a court of general jurisdiction pending designation of the arbitrators, from foreclosure or enforcement of any liens established pursuant to this Declaration or from enforcement of any order or decision of the arbitrators as provided herein. After the arbitrators have been selected and accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

i. Any of the aforementioned parties may request arbitration of any matter in dispute. The party requesting arbitration shall do so by giving written notice to the other party/parties, specifying in the notice the name and address of the person designated to act as arbitrator on the first party's behalf. Within ten (10) days after the service of this notice, the other party/parties shall give notice to the first party, specifying the name and address of the person designated to act as arbitrator on the second party's/parties' behalf. If the second party/parties fails to notify the first party of the appointment of such party's arbitrator within the time specified, then the first arbitrator appointed shall appoint the second arbitrator. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and the two arbitrators shall together appoint a third arbitrator. If the two arbitrators are unable to agree upon that appointment within twenty (20) days after the appointment of the second arbitrator, then the parties to such dispute may apply, upon notice to the other party, to the Kansas District Court located in the County in which the Property is located for the appointment of the third arbitrator. In rendering their award, the arbitrators shall have no power to modify any of the covenants, conditions and restrictions contained herein.

ii. The arbitrators so selected must be at least thirty-five (35) years old; may not be an Owner or occupant of a Lot; and shall have a minimum of five (5) years of experience in the residential real estate business, as either a sales agent, a residential developer or home builder.

iii. The arbitrators may grant any remedy or relief the arbitrators deem just and equitable and within the scope of the agreement of the parties. The arbitrators shall specifically have the power to order equitable relief, including, but not limited to, injunctions or specific performance. The award resulting from any arbitration hereunder shall be final and binding on the parties and judgment may be entered on the award and shall be enforced in accordance with the laws of the State of Kansas. If as part of any award any party is ordered to pay another party money, the amount to be so paid shall accrue interest at the rate of fifteen (15%) per annum from fifteen (15) days following the date of the award until the same is paid in full.

iv. The losing party in any such arbitration proceeding, as determined by the arbitrators, shall pay the prevailing party's costs and expenses of such arbitration, including, without limitation, reasonable attorneys' fees and costs. If no party is determined to have prevailed in such arbitration proceeding, then each party shall pay the fees and expenses of the original arbitrator appointed by that party; the fees and expenses of the other arbitrator and all other expenses of the arbitration shall be borne equally by the parties, and each party shall bear the expense of his own counsel, experts, and preparation and presentation of proof and the costs and expenses related thereto.

11.13 Exclusion of Applicability. The Developer and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Lots which are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Developer specifically reserves the right to carry on its business in the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily

11.14 Limitation on Liability.

A. Notwithstanding anything to the contrary contained herein, it is expressly agreed that neither the Developer (including without limitation any assignee of the interest of Developer hereunder) nor any member in Developer (or any assignee) or any officer, employee, or consultant of Developer 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 or Bylaws, the rules of the Association, the design guidelines of the appropriate Design Committee, or for any action taken, or not taken, pursuant to authority granted Developer, thereunder or with respect thereto. To the fullest extent permitted by law, neither the Developer, its members, the Association, the officers, employees, consultants or directors thereof or any Design Committee member, nor any other members of committees of the Association, shall be liable to the Association or any Owner or other person or entity for damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval or plans and specifications (whether or not defective), course of action, inaction, omission, negligence or the like made in good faith and which the Developer or the Association, any member, director, officer, consultant or employee thereof, or member of any such committee is reasonably believed within the scope of his duties.

B. TO THE EXTENT ALLOWED BY LAW AND EQUITY, NEITHER THE DEVELOPER 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.

11.15 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.

11.16 Abandoned Wells. In the past, oil and gas wells were drilled in the area of the Subdivision. It is possible wells were drilled and abandoned within the Property. Each Owner shall investigate such possibility to the extent it deems appropriate. Developer shall have no liability or responsibility therefore.

11.17 Trash Removal Services and Recycling. The Board shall select a single trash removal service contractor to provide regular weekly trash removal and recycling services to all residences within the Property. Each Owner or occupant of a completed residence shall utilize such trash and recycling services exclusively for such weekly services.. Except when placed at the curbside for pick up, not to exceed a 24 hour period, trash and recycling receptacles shall be stored within the garage or at another location which is not visible from any street.

11.18 Storage Pods and Other Facilities. Except as otherwise permitted from time to time by the Board, storage pods, containers or other similar storage facilities shall not be located in the open on a Lot, except on a temporary basis. A “temporary basis” shall mean (a) usage by the building contractors during the initial construction of the residence, or during substantial remodeling activity, and (b) following the completion of the initial residence, then only by the Owner in connection with their move into the residence or a move out of the residence for a period not to exceed ten consecutive days. Whether to allow exceptions to this prohibition is in the discretion of the Board.

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

DEVELOPER:

Double Down Developers, LLC

By: \_\_\_\_\_  
Philip Ruffo, Manager

STATE OF KANSAS                    )  
  ) ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
before me a Notary Public in and for the County and State aforesaid, personally appeared Philip  
Ruffo, Manager of Double Down Developers, LLC, a Kansas limited liability company,  
personally known to me to be the same person who executed 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.

My appointment expires:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

## **EXHIBIT A**

**[Plat of property marked to show minimum required square footages]**

## **EXHIBIT B**

### **Amenities of Bristol Hollows**

The following is provided to minimize misunderstandings concerning what amenities shall be installed within the Common Area by the Developer. This listing is simply a broad description of the minimum amenities to be installed:

Reserves B shall contain a small playground.



## **EXHIBIT C**

### **Example of Lot Drainage Requirements**

1  
2  
3  
4 **FIRST AMENDMENT TO AGREEMENT**  
5 **CONCERNING THE DEVELOPMENT**  
6 **OF THE BRISTOL HOLLOWES, AN ADDITION**  
7 **TO BEL AIRE, SEDGWICK COUNTY, KANSAS**  
8

9 **THIS AGREEMENT** (hereinafter referred to as the “FIRST AMENDMENT”) is made  
10 and entered into by and between Double Down Developers, LLC, a Kansas Limited Liability  
11 Company, (hereinafter referred to as the "DEVELOPER") and the CITY OF BEL AIRE,  
12 KANSAS, (hereinafter referred to as the "CITY").  
13

14 **RECITALS:**  
15

16 **WHEREAS**, the CITY and the DEVELOPER entered into a Development Agreement  
17 concerning the development of Bristol Hollowes (hereinafter referred to as the “ORIGINAL  
18 DEVELOPMENT AGREEMENT.”) The ORIGINAL DEVELOPMENT AGREEMENT was  
19 signed on March 6, 2020 and filed with the Sedgwick County Register of Deeds on April 14, 2020;  
20 and  
21

22 **WHEREAS**, the tract of land comprising Bristol Hollowes, had been zoned Single-Family  
23 Residential District (R-4) since 2008. Per the ORIGINAL DEVELOPMENT AGREEMENT, all  
24 lots were to remain zoned (R-4). They were to be controlled by a for-profit development, as a  
25 single controlling entity or owner for the approved development as presented. Construction upon  
26 such lots were to adhere to two-family dwelling units (duplexes) as shown on the approved site  
27 plan and adhere to height and area regulations for R-4 Developments. Any deviations from the  
28 conceptual drawing would need to be submitted for review and approval by the CITY via the  
29 formal re-platting process; and  
30

31 **WHEREAS**, the DEVELOPER hired Armstrong Land Survey, P.A., (hereinafter referred  
32 to as the “SURVEYOR”) in 2023, to complete metes and bounds surveys to split the lots. Neither  
33 the DEVELOPER or SURVEYOR contacted the CITY to discuss local zoning regulations  
34 regarding lot splits. The metes and bounds surveys were filed with the Sedgwick County Register  
35 of Deeds Office, (15) on March 26, 2024 and (10) on June 7, 2024; and  
36

37 **WHEREAS**, the CITY learned of the lot splits, due to staff noticing the lots were being  
38 surveyed with property pins added in the middle of the lots within Bristol Hollowes, which did not  
39 comply with the ORIGINAL DEVELOPMENT AGREEMENT. The lot splits created non-  
40 conforming issues with structure classifications, landscaping requirements, and interior lot line  
41 requirements. City staff shared concerns regarding health and safety, in relation to the common  
42 wall and fire wall ratings. City Council shared the following concerns as well: with two power  
43 meters on one side of the structure how does each property have access to their power meter,  
44 property owners not being aware of the zoning history and code requirements regarding  
45 landscaping, property owners not being aware of common wall construction and how to settle  
46 common wall issues with adjoining property owners, property owners not being aware of potential  
47 shared pipes, property owners not being provided information with title searches and closing  
48 documents; and  
49

50       **WHEREAS**, the CITY and the DEVELOPER have been working together to establish a  
51 way to bring the non-conforming structures into compliance within the zoning regulations of the  
52 CITY. A Planned Unit Development would allow for more flexibility in the land development.  
53 The Planned Unit Development Residential District (R-PUD) provides for development of  
54 innovative residential development with varying height and area regulations, depending upon the  
55 development agreement; and

56  
57       **WHEREAS**, the DEVELOPER desires a zone change request in the CITY for Bristol  
58 Hollows, from Single-Family Residential District (R-4) to a Planned Unit Development  
59 Residential District (R-PUD), to create the Bristol Hollows Addition Planned Unit Development  
60 Residential District (R-PUD), (hereinafter referred to as “BRISTOL HOLLOWES ADDITION R-  
61 PUD”) in Bel Aire, Sedgwick County, Kansas, and

62  
63       **NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the  
64 DEVELOPER and the CITY agree as follows:

65  
66       **PURPOSE.** The purpose of Planned Unit Developments are intended to allow substantial  
67 flexibility in planning and designing a proposal. The CITY’s Planned Unit Development  
68 Residential District (R-PUD) is intended to provide for development of innovative residential  
69 development. It is more flexible in the form of relief from compliance with other more restrictive  
70 zoning ordinances and design requirements.

71  
72       **PROJECT DESCRIPTION.** This Planned Unit Development Residential District (R-  
73 PUD) is intended to allow for the redevelopment of structures (duplexes) and lots that came into  
74 existence legally and in conformance with all applicable zoning requirements but no longer  
75 conform, due to the DEVELOPER’s unapproved lot splits. The duplexes will be converted to  
76 townhouses with zero interior lot lines on a reduced lot size, as built. The landscaping requirements  
77 will be modified, fire extinguishers will be required (need to compile and add more information),  
78 . It is recognized that lot splits do occur and that the CITY does not currently have a lot split process  
79 for this type of scenario. This agreement is necessary to address the need of bringing non-  
80 conforming structures into compliance with the zoning regulations of the CITY, to promote safety,  
81 address concerns, prevent blight, and benefit the surrounding community as a whole.

82  
83       **BRISTOL HOLLOWES ADDITION R-PUD PROJECT LEGAL DESCRIPTION.** The  
84 tract of land herein referred to as BRISTOL HOLLOWES ADDITION R-PUD project to the City of  
85 Bel Aire, Kansas has the following legal description, to-wit:

86  
87       Legal Description:

88       Lots 1 through 19, Block A, and Lots 1 through 21, Block B, Bristol Hollows  
89       Addition, Bel Aire, Sedgwick County, Kansas.

90  
91       General Description:

92       53<sup>rd</sup> Street North and Bristol Street, Bel Aire, Sedgwick County, Kansas

93  
94       **PERMITTED USE.** The Bristol Hollows Addition R-PUD to the City of Bel Aire, Kansas  
95 shall have the uses permitted in the “R-4” Single Family Residential District, as defined in the 2020  
96 revised Bel Aire codified city code, including the following uses with additional conditions:

97  
98       “R-4” Single Family:

- Single-Family
- Two-Family

**CONDITIONS.**

1. Lot splits are permitted for all lots within this R-PUD. Applications for lot splits shall be submitted to the CITY for approval.
2. Lot splits shall be recorded with the Sedgwick County Register of Deeds office to establish a new zoning lot upon the approval of the lot split by the CITY.
3. Lot splits recorded with the Sedgwick County Register of Deeds office prior to this agreement ((15) on March 26, 2024 and (10) on June 7, 2024) shall be considered as approved by the CITY.
4. The respread of special assessment taxes shall be divided 50% of aggregate to each new lot created within the lot split.
5. The property development standards of the “R-4” Single-Family Residential Zoning district shall apply to lots 1 through 19, Block A, and lots 1 through 21, Block 4 with the following exceptions:
  - a. There shall be no required interior side yard setbacks, provided units on the divided lots share a common wall.
  - b. Divided lots, as permitted by provision 1, shall have a minimum lot area of 4,000 square feet.
  - c. Divided lots, as permitted by provision 1, shall maintain a minimum lot width of 25’ as measured along the front building setback line.
  - d. All dwellings shall be built to all applicable building standards adopted by the CITY.
6. All construction of dwellings constructed prior to the approval of this Planned Unit Development shall be considered in accordance with said R-PUD to a duplex building standard as an exception to all applicable building standards adopted by the CITY. The landscape requirement should be divided equally between the two new lots.
7. Homes on lots that are split will be considered townhouses as defined in the Townhouse Ownership Act outlined in Chapter 58 Article 37 of the Kansas State Statutes. All applicable sections of the act will apply to all lots that are split within this R-PUD.
8. Title: The transfer of the title on all or any portion of the land included in this R-PUD does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for residential development and be binding upon the present owners, their successors and assigns and amended.
9. Homeowners Association: A document to create and operate a homeowner’s association shall be filed with the Final R-PUD Plan and Plat for each parcel to provide for the

148 maintenance of open space, common areas, reserves, parking areas if any, signs, logos,  
149 berms, screening walls, landscaping, buffer areas, drainage channels, swales, reserve alley  
150 areas, hedge-rows within adjacent arterial street rights-of-ways, common or shared parking  
151 areas, etc. Said document shall be received by the CITY and recorded with the Sedgwick  
152 County Register of Deeds. Upon the failure of the Homeowners Association(s) to properly  
153 and adequately maintain any of the areas listed above, the CITY may serve notice on the  
154 Homeowners Association(s) of its failure to so maintain, setting out the manner in which it  
155 has failed to perform, and granting it ten (10) days within which to perform all of the items  
156 designated in said notice. After said ten (10) days, the CITY may, at its option, enter upon  
157 the property to perform the work prescribed in said notice of deficiency, and the cost of such  
158 work performed by the CITY shall be assessed against the Homeowners Association(s)  
159 and/or property owners within the subdivision.

- 160  
161 10. Developers Agreement: This FIRST AMENDMENT shall accompany the Final R-PUD  
162 Plan and Plat which shall be recorded with the Sedgwick County Register of Deeds.  
163
- 164 11. The R-PUD and proposed uses are for the existing buildings. Should any other development  
165 take place within the R-PUD area in the future, it shall be subject to site plan submittal to  
166 the CITY's Director of Planning. Future development shall comply with the spirit and intent  
167 of this R-PUD or may be approved if determined to cause no further burden to the  
168 community.  
169
- 170 12. The development of this property shall proceed in accordance with the development plan as  
171 recommended for approval by the Planning Commission and approved by the Governing  
172 Body, and any substantial deviation of the plan, as determined by the CITY's Director of  
173 Community Development, shall constitute a violation of the building permit authorizing the  
174 proposed development.  
175
- 176 13. Amendments, adjustment or interpretations to this R-PUD shall be done in according with  
177 the CITY's code.  
178
- 179 14. Landscaping: Each Lot is to have a minimum of one (1) tree planted in the front yard of  
180 each Lot and the trunk of each tree should be a minimum of two (2) inches in diameter.  
181 Corner Lots require a minimum of three (3) trees planted on each Lot. (This language has  
182 also been added to the "Declaration of Covenants, Conditions, Restrictions, Easements and  
183 Disclosures for Bristol Hollows Phase II", page 13.)  
184
- 185 15. Restrictive Covenants: Shall be filed with the final R-PUD plan for each parcel, with the  
186 Sedgwick County Register of Deeds.  
187
- 188 16. Townhouses are defined as a multi-family dwelling, in which a group of 2 or more attached  
189 single-family dwelling units is constructed so that each unit extends from foundation to roof  
190 and has open space on at least 2 sides. Each unit of the townhouse may be placed on a  
191 separate lot in which the internal setbacks between each attached unit shall be 0 feet, as  
192 specified herein.  
193
- 194 17. If lots are developed as zero lot lines; each lot where abutting and adjoining another lot line  
195 shall provide a minimum of a 6-foot maintenance and access easement for the benefit of  
196 adjoining owner(s), their successors and assigns, and/or their agents, and emergency

personnel. The maintenance access easements shall be platted for the purpose of pedestrian emergency access, residence construction and residence maintenance, the extension of the footing, and for a 2-foot overhang of the structure on the adjoining lot.

18. The Developer shall strictly observe and comply with all regulations, resolutions, policies, and ordinances of the CITY and Sedgwick County, and all statutes and laws of the State of Kansas and of the United States. Any violations occurring while the Developer or any designated builder is in title to the offending lot or lots, shall constitute a material breach of this agreement:
19. To ensure public health and safety, each structure will require a fire extinguisher in the kitchen/cooking area, that is maintained and inspected regularly. (This language is included in the "Party Wall Agreement Concerning Development in the Bristol Hollows Addition R-PUD".)
20. To ensure public health and safety, if in any structure, there are any penetrations in the sheetrock of the common wall, the occupant must use Fire-Gard Fire-Stopping Sealant Caulk. Any penetrations shall be caulked and sealed at all times. (This language is included in the "Party Wall Agreement Concerning Development in the Bristol Hollows Addition R-PUD".)
21. DEVELOPER must serve the "Party Wall Agreement Concerning Development in the Bristol Hollows Addition R-PUD" to all adjoining owners.

**OBJECTIVE.** A specific objective of this agreement is to assure that necessary improvements are in place to support development of the tract of land herein referred to as the Bristol Hollows Addition R-PUD to the CITY. Therefore, the DEVELOPER's compliance with the terms and conditions of this Agreement shall be a condition precedent to the granting of building and/or occupancy permits for development on said property.

**INFRASTRUCTURE INSTALLATION.** Installation of all improvements shall be in compliance with requirements of all applicable federal, state and local legislation, including the Americans with Disabilities Act. All electric power, streetlights, cable and telephone service shall be installed underground. The DEVELOPER shall be responsible for the costs of engineering design, construction and inspection of all private utility improvements (electricity, communications, telecommunications and gas) necessary for the platting and development of the tract of land herein referred to as the Bristol Hollows Addition in accordance with the utility extension requirements of each private utility company. Utility improvements shall be installed on CITY owned property or within public right of ways or easements. The expense of all such utility and sewer service within the property shall be borne by the DEVELOPER.

The DEVELOPER shall dedicate necessary public easements for all private and public utility improvements necessary for the platting and development of the tract of land herein referred to as the Bristol Hollows Addition R-PUD to the CITY. Said improvements include storm water system, water distribution system, sanitary sewer lines, driveways and utilities.

The DEVELOPER shall pay one hundred percent (100%) of the cost of the improvements. The DEVELOPER shall indemnify and hold harmless the CITY from any liability from damages that may occur during construction.

**DRAINAGE.** The ultimate effect of increased drainage from platted property on

surrounding property must be addressed as part of the platting process. The DEVELOPER shall prepare a storm drainage plan that shall address the effect of increased drainage, meet CITY specifications and be approved by the City Engineer. As part of the drainage plan, a final grading plan showing all drainage inlets and a storm sewer plan including placement of inlets, pipes and manholes, shall be submitted and approved by the CITY prior to any issuance of permits. Street, curb, lot corner and pad elevations shall be submitted for review and approval by the CITY prior to any demolition, site development, construction or permits obtained. All Storm water outfall lines shall be placed within utility easements dedicated to the CITY. After approval by the City Engineer of said storm drainage plan, with any necessary modifications, the DEVELOPER shall install, or cause to be installed, the improvements pursuant to the drainage plan.

**SANITARY SEWER.** The CITY will provide access to the property line for public sanitary sewer in the utility easements provided with the plat per the approved City Engineer's drawings on file for Bristol Hollows Addition. Each unit or tenant space must have separate sanitary sewer hookups installed to CITY standards. The DEVELOPER shall pay all Sanitary Sewer User Fees and Hook Up Fees.

**WATER.** The CITY will provide access to the property line for public water in the right-of-way located along 53<sup>rd</sup> St N. per the approved City Engineer's drawings on file for Bristol Hollows Addition R-PUD. Each unit or tenant space must have separate metered water supply installed to City standards. The DEVELOPER shall pay all Water User Fees and Hook Up Fees.

All fire hydrant locations must be identified on a plan & approved by the Sedgwick County Fire Department according to its standards. DEVELOPER is responsible to meet all Sedgwick County Fire Codes & Standards and installation by the DEVELOPER shall be to City standards.

**SIGNAGE.** All signage shall comply with the applicable ordinances and zoning regulations of the CITY and be submitted in writing to the CITY for approval. Each site shall be allowed one six-foot wide monument type entry sign, not exceeding 6 feet in height. Any future signage must be approved by the City Manager.

**PERMITS.** No construction shall commence on any portion of the tract of land herein referred to Bristol Hollows Addition R-PUD project to the CITY without the DEVELOPER, or its designated builder, having first obtained the proper building and zoning permits from the CITY.

The development of Bristol Hollows Addition project to the CITY shall proceed in accordance with this Agreement and subsequent platting. Any deviation, as determined by the CITY, shall constitute a violation of the building permit authorizing construction of the proposed development. The final site dimensions, grading plan, drainage, landscape plan, street plan, parking plan and utility plans will be submitted and approved in phases based on the conceptual plans. Any deviations from the conceptual drawing shall be submitted for review and approval by the CITY.

Any and all costs including permit fees, review fees, and building and zoning permit and review fees incurred or required by CITY staff and review and/or through building and zoning review shall be paid by the DEVELOPER.

**RECORDING.** The DEVELOPER shall file an executed copy of this Agreement with the Sedgwick County Register of Deeds within 30 days of final approval by the Governing Body and within 45 days provide CITY with proof of filing. A copy of this Agreement showing said recording along with a copy of the recorded plat shall be furnished by the DEVELOPER to the general contractor before building permits are issued.

294  
295           **BINDING.** The terms and conditions of this Agreement, as set forth herein, shall be  
296 binding upon the CITY and the DEVELOPER, their successors, representatives, trustees, and  
297 assigns.  
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[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



**THIS AGREEMENT** is hereby signed on this \_\_\_\_\_ day of November, 2024.

Double Down Developers LLC, (DEVELOPER)

\_\_\_\_\_  
Philip J. Ruffo, Managing Member

**THIS AGREEMENT** was approved by the Governing Body of the City of Bel Aire, Kansas, on this \_\_\_\_\_ day of November, 2024 and is hereby signed on this \_\_\_\_\_ date of November, 2024.

City of Bel Aire, Kansas, (CITY)

\_\_\_\_\_  
Jim Benage, Mayor

SEAL

ATTEST:

\_\_\_\_\_  
Melissa Krehbiel, City Clerk

ACKNOWLEDGEMENTS

STATE OF KANSAS )  
COUNTY OF SEDGWICK ) ss:

BE IT KNOWN BY ALL PERSONS that on this \_\_\_\_\_ day of November, 2024, before me, a Notary Public, came Philip J. Ruffo, as Managing Member of Double Down Developers, LLC, a Kansas limited liability company, DEVELOPER, who is known to me and who personally acknowledged execution of the foregoing Agreement concerning the BRISTOL HOLLOWS ADDITION R-PUD to the City of Bel Aire, Kansas.

\_\_\_\_\_  
NOTARY PUBLIC

My Appointment Expires: \_\_\_\_\_

STATE OF KANSAS )  
COUNTY OF SEDGWICK ) ss:

BE IT KNOWN BY ALL PERSONS that on this \_\_\_\_\_ day of November, 2024, before me, a Notary Public, came Jim Benage, who is known to me to be the Mayor of Bel Aire, Kansas and who personally acknowledged execution of the foregoing Agreement Concerning the Development of BRISTOL HOLLOWS ADDITION R-PUD to the City of Bel Aire, Kansas, and Melissa Krehbiel, who is known to me to be the City Clerk of Bel Aire, Kansas, and who personally acknowledged attesting the signature of said Jim Benage.

\_\_\_\_\_  
NOTARY PUBLIC

My Appointment Expires: \_\_\_\_\_

**PARTY WALL AGREEMENT  
CONCERNING DEVELOPMENT IN  
BRISTOL HOLLOWS ADDITION R-PUD**

**1. Parties and Property**

1.1 This Party Wall Agreement ("Agreement") is made on (DATE) between (PARTY A) and (PARTY B) collectively referred to as the "Parties."

1.2 Owner A is the owner of the property located at (ADDRESS A)

1.3 Owner B is the owner of the adjacent property located at (ADDRESS B)

1.4 The properties share a common wall ("Party Wall") along their shared boundary.

**2. Governing Law**

2.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

**3. Ownership and Rights**

3.1 The Parties agree that they each own an undivided one-half interest in the Party Wall.

3.2 Each Party shall have the right to use the Party Wall for support of their respective buildings and structures.

3.3 Neither Party shall make any alterations to the Party Wall that would impair its structural integrity or interfere with the other Party's use without prior written consent.

**4. Maintenance and Repairs**

4.1 The Parties shall equally share the cost of maintaining and repairing the Party Wall.

4.2 If one Party's actions necessitate repairs, that Party shall bear the full cost of such repairs.

4.3 Emergency repairs may be undertaken by either Party, with costs to be shared equally unless Section 4.2 applies.

**5. Destruction and Reconstruction**

5.1 If the Party Wall is partially or totally destroyed, the Parties shall rebuild it at their joint expense, unless one Party elects not to rebuild their structure.

5.2 If one Party elects not to rebuild, they shall contribute half the cost of demolition and shall have no further rights in the Party Wall.

**6. Dispute Resolution**

6.1 Any disputes arising from this Agreement shall be resolved through mediation before resorting to litigation.

6.2 If mediation fails, this contract shall be interpreted under the laws of the State of Kansas without regard to its choice of law provisions, and that venue of any dispute requiring litigation shall be in any court of appropriate jurisdiction in Sedgwick County, Kansas.

**7. Binding Effect**

7.1 This Agreement shall be binding upon and inure to the benefit of the Parties, their heirs, successors, and assigns.

47 8. Amendments

48 8.1 This Agreement may only be amended by written instrument signed by both Parties.  
49

50 9. Severability

51 9.1 If any provision of this Agreement is held invalid or unenforceable, the remainder shall  
52 remain in full force and effect.  
53

54 10. Exhibit A

55 10.1 A drawing of the party wall is depicted in Exhibit A and incorporated herein, by reference.  
56

57 IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above  
58 written.  
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63 *[Remainder of this page intentionally left blank]*  
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**THIS AGREEMENT** is hereby executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PARTY A

\_\_\_\_\_  
Name

**THIS AGREEMENT** is hereby executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PARTY B

\_\_\_\_\_  
Name

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ACKNOWLEDGEMENTS

STATE OF KANSAS            )  
COUNTY OF SEDGWICK    )  
                                  ss:

BE IT KNOWN BY ALL PERSONS that on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_,  
before me, a Notary Public, came Party A, \_\_\_\_\_, who is known to me and who personally  
acknowledged execution of the foregoing Agreement concerning the PARTY WALL  
AGREEMENT CONCERNING DEVELOPMENT IN BRISTOL HOLLOWS ADDITION R-  
PUD to the City of Bel Aire, Kansas.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

STATE OF KANSAS            )  
COUNTY OF SEDGWICK    )  
                                  ss:

BE IT KNOWN BY ALL PERSONS that on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_,  
before me, a Notary Public, came Party B, \_\_\_\_\_, who is known to me and who personally  
acknowledged execution of the foregoing Agreement concerning the PARTY WALL  
AGREEMENT CONCERNING DEVELOPMENT IN BRISTOL HOLLOWS ADDITION R-  
PUD to the City of Bel Aire, Kansas.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

Technical drawing of a wall section showing insulation and soundboard details. The drawing includes the following components and labels:

- Dimensions:**
  - Overall height: 10'-1"
  - Top section height: 3'-0"
  - Bottom section height: 7'-7"
  - Top section width: 2'-2"
  - Bottom section width: 2'-2"
  - Top section width: 2'-2"
  - Bottom section width: 2'-2"
- Labels:**
  - 2"x4" Wall with 5/8" Sheetrock (pointing to the left wall)
  - 2"x4" Wall with 5/8" Sheetrock (pointing to the right wall)
  - 1/2" Soundboard between walls (pointing to the central gap)
  - R-11 Insulation Batts in Wall (Both Sides) (pointing to the insulation area)
  - 2068 SHELVES (pointing to the top section)
  - 30" RANGE (pointing to the middle section)
  - REF. (pointing to the bottom section)