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REBECCA L. DAVIS
REGISTER OF DEEDS

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SYMPHONY AT MONTICELLO

A SUBDIVISION IN

THE CITY OF SHAWNEE

JOHNSON COUNTY, KANSAS

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

SYMPHONY AT MONTICELLO

RECITALS:

(A) **PARKWOOD FOUR, LC**, a Kansas limited liability company ("**Declarant**"), is the current owner of certain real property known as SYMPHONY AT MONTICELLO (the "Addition") covering the property in the City of Shawnee, Johnson County, Kansas more particularly described on Exhibit A attached hereto and incorporated herein by reference.

(B) For the purpose of promoting the development of the Addition in a first-class manner, Declarant desires to place certain restrictions on the land comprising the Addition as more fully set forth herein.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant hereby declares as follows:

ARTICLE I

DEFINITIONS

The following words and phrases when used in this Declaration (unless the context shall otherwise prohibit) shall have the following meanings:

(a) **Addition** - as defined in the Recitals above.

(b) **Approved Materials** - as defined in Section 4.6.

(c) **Association** - the homeowners' association, if any, established in connection with the Addition in the manner set forth in Section 2.3, which homeowners' association (if formed) shall be a Kansas non-profit corporation. The provisions of this Declaration concerning the Association shall become effective upon formation of the Association (if ever formed) and shall continue to be effective during the period of time that the Association is in existence pursuant to this Declaration.

(d) **Board** - the board of directors of the Association (if formed), as set forth in Section 8.3.

(e) **Builders** - as defined in subparagraph (l) below.

(f) **Common Area** - as defined in Section 9.3.

(g) **Common Facilities** - (a) all areas and facilities within the Addition designated by Developer for the general use or benefit of all Owners and occupants of the Addition, including any parks, green space, landscaping within the island areas and located within street right-of-way and landscaping features; playgrounds, swimming pools, jogging and bicycling trails and other recreational areas; sidewalks and walkways; special and decorative lighting; signs, monuments, bridges; median strips and islands in streets; ponds, streams, creeks and drainage and retention facilities; streets and street lighting; and any fencing around the perimeter of the Addition; (b) any land deeded to the Association by or at the direction of Developer; (c) any easements, leases, licenses or other rights of use granted to the Association by or at the direction of Developer, and the land or other property which is the subject thereof; and (d) all buildings, structures and other improvements, fixtures and equipment and other tangible personal property owned by the Association and located on, or used in connection with or forming a part of any of the foregoing; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Facility so enumerated will exist within the Addition.

(h) **City** - the City of Shawnee, Kansas.

(i) **Committee** - the Architectural Control Committee (if formed), as provided in Section 5.1.

(j) **County** - Johnson County, Kansas.

(k) **Declarant** - PARKWOOD FOUR, LC, a Kansas limited liability company and any successors thereto as provided in Section 2.2.

(l) **Declaration** - this Declaration of Covenants, Conditions and Restrictions, as amended from time to time as expressly provided herein.

(m) **Developer** - PARKWOOD FOUR, LC, a Kansas limited liability company, and any successors thereto or assignees thereof as provided in Section 2.2, who undertakes the development of the land in the Addition into lots or succeed by assignment from the Developer to some or all of the Developer's rights hereunder, but specifically excluding those persons or entities (the "**Builders**") whose activities are limited to the construction of residences on developed lots or the purchase and resale of previously developed lots and who have not been assigned any of the Developer's rights hereunder.

(n) **FHA** - the Federal Housing Administration, or any successor agency or authority thereto.

(o) **land** - all of the real property located in the Addition including, without limitation, the Common Area (if any), and all lots.

(p) **lot(s)** - one or more numbered lots or plots as shown or to be shown on the "Plat(s)" (as hereinafter defined), not including any Common Area (if any), public areas, parks, esplanades, tracts owned or subsequently acquired by any public body or any plot or tract shown as a reserve lot (whether unrestricted or not) on the Plat(s).

(q) **maintenance fund** - as described in Section 9.2.

(r) **owner** - the record owner, whether one or more persons or entities (including contract sellers, the Developer and Builders), of fee simple title to a lot, but specifically excluding those having an interest merely as security for the performance of an obligation.

(s) **Plat(s)** - The recorded plat(s) as defined in Exhibit A for the Addition as such plat(s) may be replatted and amended from time to time, together with the plat(s) for any additional land subsequently added to the Addition pursuant to Section 2.4, which plat(s) shall reflect the City approved (or proposed City approved) platting, location and size of all lots in the Addition and the location of the streets and easements on, adjacent to or affecting such lots.

(t) **residence** - a freestanding single family residential dwelling constructed on a lot, as defined in Section 3.1.

(u) **State** - means the state in which the Addition is located.

(v) **VA** - the Veterans Administration, or any successor agency or authority thereto.

ARTICLE II
DECLARATION, DECLARANT, DEVELOPER AND ASSOCIATION

Section 2.1 **Declaration**.

(a) Declarant hereby declares that all of the land in the Addition shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions contained in this Declaration, which easements, covenants, conditions and restrictions (i) are for the purpose of establishing a general scheme for the development of, and construction of residences on, the land in the Addition, (ii) are for the purpose of enhancing and protecting the value, attractiveness, appeal and desirability of all land within the Addition, (iii) shall run with all land within the Addition and be binding on all parties having or acquiring any right, title or interest in the land or any part thereof, and (iv) shall inure to the benefit of each owner of any portion of the land. The easements, covenants, conditions and restrictions contained in this Declaration are made for the mutual and reciprocal benefit of each and every owner of any portion of the land within the Addition and are intended to create (i) mutual and equitable servitudes upon each portion of land (including each of the lots, tracts and Common Area, if any) in favor of each and all other portions and tracts of land within the Addition, (ii) reciprocal rights between the respective owners of any portion of the land,

and (iii) privity of contract and estate between the grantees of each portion of the land, their heirs, legal representatives, successors and assigns.

(b) This Declaration may be amended in any respect and in whole or in part at any time by recording an instrument containing such amendment(s) in the deed records of the County. Such amendments may be made by the Developer without a vote of the lot owners as long as Developer owns any lots in the Addition, and may be made by the lot owners if such amendments have been approved by the owners representing at least seventy-five percent (75%) of (i) all votes of each class of voting membership (if the Association has been created and is in existence as of the date of such vote), or (ii) the votes of the lot owners at a meeting at which a quorum is present (if the Association has not been created or is no longer in existence as of the date of such vote), whichever applies; PROVIDED, HOWEVER, until the completion of construction of residences on all lots within the Addition, no such amendment shall be valid or effective without the joinder of Developer and the Committee (if formed) unless such party waives its right to consent to such amendment; PROVIDED, FURTHER, if the Association is formed and FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then as long as the Association has Class B members or Developer is in control of a majority of the votes of the Association, any amendment which affects or alters any provisions hereof directly governed or regulated by the FHA or VA shall also be subject to the approval of the FHA, VA and Department of Housing and Urban Development ("**HUD**") unless such amendments merely correct errors in this Declaration or are required to comply with any requirements imposed by HUD, FHA or VA.

Section 2.2 **Declarant and Developer**.

(a) The initial Declarant of this Declaration is PARKWOOD FOUR, LC, a Kansas limited liability company. After this Declaration is created and filed of record, the Declarant shall have no further rights, duties or obligations hereunder, and all of its rights shall immediately pass to and vest in the Developer hereunder.

(b) The initial Developer of the Addition shall be PARKWOOD FOUR, LC, a Kansas limited liability company. Such initial Developer shall have the right, but not the obligation, in the event of the transfer of all or any portion of the Addition to another person or entity, to convey all or a portion of the rights and obligations of Developer to such transferee, whereupon such transferee shall become "Developer" for all purposes hereunder with respect to (but only with respect to) the portion of the Addition so conveyed to such transferee. Developer shall not in any way or manner be held liable or responsible for any damages occasioned by violations of restrictions set forth in this Declaration by any person or entity other than itself. If Developer conveys a portion (but not all) of the rights and obligations of Developer hereunder to one (1) or more transferees, then (i) the rights of Developer hereunder shall be exercised by the initial Developer based on the affirmative or consensus majority vote of the persons (including the Developer) possessing such rights, which vote shall be allocated to such persons and weighted based on the number of lots (or number of proposed lots) owned by such persons, except to the extent such rights are otherwise restricted or specified in the conveyance document, and (ii) the obligations of Developer hereunder shall be

performed by or enforced against Developer or the party to whom such obligations have been conveyed by the initial Developer hereunder. If the Developer conveys all of its land in the Addition to owner(s) who do not succeed to the rights and obligations of the Developer hereunder, then the lot owners shall obtain the rights of the Developer herein and there shall be no Developer herein.

Section 2.3 **Association**.

(a) Commencing on the date hereof and continuing until at least ninety-five percent (95%) of all lots in the Addition have been sold to lot owners and have residences thereon, Developer shall have the sole right, but not the obligation, to create the Association as a Kansas non-profit corporation. After more than ninety-five percent (95%) of all lots in the Addition have been sold to lot owners and have residences thereon, the Association may be created and formed (i) by Developer, or (ii) by the lot owners if the lot owners representing at least seventy-five percent (75%) of all lots assent to create the Association. At Developer's option, Developer shall have the right to maintain absolute and exclusive control of the Association for a period of ten (10) years after the date this Declaration is recorded (the "Turnover Date").

(b) The Declarant and Developer shall have no responsibility or liability for (i) the creation, formation, management or operation of the Association, (ii) any actions taken or omitted to be taken by or on behalf of the Association as a result of, in connection with, under or pursuant to this Declaration or the Addition, or (iii) any liabilities, obligations, debts, actions, causes of action, claims, debts, suits or damages incurred by or on behalf of or arising in connection with the Association, the Addition or the duties and obligations of the Association pursuant to this Declaration.

Section 2.4 **Annexation**. Additional land(s) may be included in the land covered hereby and become subject to this Declaration and part of the Addition upon the filing of record of a Supplementary Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such real property; PROVIDED, HOWEVER, that such Supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or appropriate to reflect the different character, if any, of the added real properties and as are not materially inconsistent with this Declaration and which do not adversely affect the concept of this Declaration. Furthermore, the following provisions shall apply:

(a) At any time, all or any part of the real property described legally on Exhibit "B" attached hereto and incorporated herein by reference (the "Future Property") may be added and annexed to the land and scheme of the Declaration by (i) the Developer in its sole discretion, or (ii) the consent of all of the owner(s) of the Future Property to be annexed and of owners representing at least seventy-five percent (75%) of all lots then subject to this Declaration.

(b) Prior to the formation (if ever) of the Association and at all times that the Association is no longer in existence, additional real property (other than the Future Property) may be added and annexed to the land and scheme of the Declaration by (i) the Developer in its sole discretion, or (ii) the consent of the owners representing at least seventy-five percent (75%) of all lots. If FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then, as long as the Developer is acting without the consent of at least 75% of all other lot owners, then the annexation of additional real property (other than the Future Property) to the land and scheme of this Declaration shall also be subject to the approval of FHA, VA and HUD.

(c) The Association (if formed) may add or annex additional real property to the land and scheme of this Declaration by obtaining the consent of the owners representing at least seventy-five percent (75%) of all votes of voting membership. If FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then, as long as the Association has Class B members or Developer controls a majority of the votes of the Association, any addition or annexation of additional real property (other than the Future Property) to the land and scheme of this Declaration shall also be subject to the approval of FHA, VA and HUD.

(d) In the event Developer owns any lots in the Addition and any person or entity other than the Developer desires to add or annex additional residential properties and/or Common Areas to the scheme of this Declaration, then, in addition to the requirements set forth above, such proposed annexation must have the prior written consent and approval of the Developer.

(e) Any real property additions or annexations made pursuant to this Section 2.4, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Developer, Association (if formed) and Committee (if formed) to the real properties added or annexed.

Section 2.5 **Reservation by Developer; Grant to Association**. Developer hereby reserves to itself and its successors and assigns and grants to the Association the right, privilege and easement to enter upon the Common Facilities and the Lots to the extent necessary for the purposes of (a) constructing, maintaining, relocating, repairing and replacing decorative walls, underground sprinkler systems, lighting, sidewalks, signs, landscaping features, recreational facilities and other improvements on the Common Facilities, which Developer or the Association reasonably believes will enhance the beauty and function of the Common Facilities or the Addition; (b) planting, replanting, maintaining, relocating and replacing grass and landscaping on the Common Facilities; and (c) doing all other things which Developer or the Association shall be obligated to do as set forth in this Declaration or shall deem desirable for the neat and attractive appearance and beautification of the Common Facilities.

Section 2.6 **Grant to Owners**. Developer hereby grants to each Owner the non-exclusive, perpetual right, privilege and easement to use the Common Facilities for the respective purposes for which the Common Facilities are constructed, designed and intended, subject, however, to all of the provisions of this Declaration, the provisions of the Association's Articles of Incorporation and Bylaws and any reasonable rules and regulations of general application within the Addition which the Association may adopt from time to time, which right, privilege and easement shall survive the termination of this Declaration.

Section 2.7 **License to Enter**. During the term of this Declaration and thereafter as long as any of the easements created by this Declaration survive, Developer, the Association and their respective partners, officers, employees, agents and contractors shall have a temporary license to enter upon and use such portions of any Lot as may be reasonably necessary to permit Developer or the Association to exercise or perform the rights, powers and obligations reserved to Developer or the Association by the provisions of this Declaration.

Section 2.8 **Dedication of Common Areas**.

(a) Prior to the formation (if ever) of the Association and at all times that the Association is no longer in existence, additional real property may be dedicated as Common Areas by (i) the Developer in its sole discretion, or (ii) the consent of the owners representing at least seventy-five percent (75%) of all lots. If FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then, as long as the Developer is acting without the consent of at least 75% of all other lot owners, then the dedication of such additional Common Areas shall also be subject to the approval of FHA, VA and HUD.

(b) The Association (if formed) may dedicate additional real property as Common Areas by obtaining the consent of the owners representing at least seventy-five percent (75%) of all votes of voting membership. If FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then, as long as the Association has Class B members or Developer controls a majority of the votes of the Association, any dedication of additional real property as Common Areas shall also be subject to the approval of FHA, VA and HUD.

ARTICLE III
RESTRICTIONS ON USE OF LOTS

Section 3.1 **Residential Use**. Except for the lots (if any) on which any Common Area (if any) is located, all lots shall be used only for single-family private residential purposes and related amenities (including, without limitation, such amenities as may be located on the Common Area [if any] from time to time as provided herein). Except on the Common Area (if any) or on the lot(s) on which the monument sign (if any) is located, no building or structure shall be erected, altered, placed or permitted to remain on any lot other than one (1) freestanding single-family residence ("**residence**") per lot (which residence may not exceed two (2) stories in height), one (1) in-the-

ground pool, one (1) private garage and appurtenant sidewalks, driveways, curbs, fences and storage or mechanical buildings not otherwise prohibited hereby.

Section 3.2 **Single-Family Use**. Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together or in the same residence as a single housekeeping unit; PROVIDED, HOWEVER, that nothing contained herein shall prevent occasional temporary occupancy by guests of the family or occupancy by full-time domestic servants or medical assistants employed by the family. No building or structure intended for or adapted to commercial, business or professional purposes, nor any apartment house, duplex, double house, lodging house, rooming house, dormitory, church, school, hospital, sanitorium, guest house, servant's quarters or multiple-family dwelling shall be erected, placed, permitted or maintained on any lot.

Section 3.3 **Restrictions on Resubdivision**. Except for the initial subdivision and platting of the land contemplated or undertaken by Developer and any replatting undertaken by Developer, none of the lots shall be divided into smaller lots.

Section 3.4 **Uses Specifically Prohibited**.

(a) No machinery, boat, marine craft, boat or motorcycle trailer, hovercraft, aircraft, recreational vehicle, pick-up camper, travel trailer, motor home, camper body or similar vehicle or equipment (collectively, "**Vehicle** or **Equipment**") may be (i) parked for storage in the front driveway or front yard of any lot or residence which has a rear or side entry garage, (ii) parked for storage in the front driveway or front yard of any lot or residence which has a front entry garage if such Vehicle or Equipment exceeds twenty (20) feet in length, (iii) parked on any public street in the Addition, (iv) parked for storage in the side or rear yard of any lot or residence unless substantially concealed from public view, or (v) parked for storage anywhere on the lot unless such Vehicle or Equipment is fully operational and has all current licenses and permits necessary or appropriate for use on public thoroughfares or waterways. No such Vehicle or Equipment shall be used as a residence or office temporarily or permanently, provided that this restriction shall not apply to any Vehicle or Equipment temporarily parked and in use for the construction, maintenance or repair of a residence in its immediate vicinity. For purposes of this Declaration, any Vehicle or Equipment shall be "parked for storage" if it is parked on or in front of a lot for more than twenty (20) consecutive days without it being driven and used on a public street or thoroughfare.

(b) Trucks with tonnage in excess of one (1) ton and any truck in excess of one-half ton with painted or affixed advertisement shall not be permitted to park overnight within the Addition except those used by Developer or a Builder during and directly related to the development of the Addition or construction of improvements on a lot in the Addition.

(c) No vehicle of any size which transports dangerous, flammable, hazardous, corrosive or explosive cargo may pass through or be kept in the Addition at any time.

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(d) Except to the extent expressly permitted hereby, no vehicles or similar equipment shall be parked or stored in any area visible from any street except passenger automobiles, passenger vans, motorcycles, pick-up trucks (with tonnage not in excess of one (1) ton) and pick-up trucks with attached bed campers (with tonnage not in excess of one (1) ton) that are in operating condition with current license plates and in daily use as motor vehicles on the streets and highways of the State.

(e) No manufacturing, industrial, oil or gas drilling, oil or gas development, smelting, refining, quarrying or mining operations of any kind shall be permitted in the Addition, nor shall oil or gas wells, tanks, tunnels, pipelines (other than natural gas lines installed and maintained by a utility company), mineral excavations or shafts be permitted upon or in any part of the Addition. No derrick or other structure, equipment or machinery designed for use in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted within the Addition.

(f) No animals of any kind shall be raised, bred or kept on any land in the Addition except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the residents of any residence constructed on a lot. Animals are not to be raised, bred or kept for commercial purposes or for fur, clothing or food. Without limiting the foregoing, it is the general purpose of these provisions to restrict the use of the Addition so that no person shall permanently or temporarily quarter in the Addition live cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks, snakes or any other reptiles, mammals or animals (domesticated, household or otherwise) that may interfere with or threaten the quietude, health or safety of the community. No more than four (4) domesticated household pets will be permitted on each lot. Pets must be restrained or confined on the owner's back lot inside a fenced area (which may be in the form of a so-called "invisible" electric fence) or within the residence. All lots shall be kept clean and free of pet waste and debris. All animals shall be properly tagged for identification and shall be properly vaccinated, bathed and otherwise kept clean to avoid health or safety risks and concerns.

(g) No portion of the Addition shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind including, without limitation, broken or rusted equipment, disassembled, incomplete or inoperable cars or Vehicles or Equipment and discarded appliances and furniture. Trash, garbage or other waste shall not be kept on any lot or anywhere in the Addition except completely within well-maintained sanitary containers and only in reasonable quantities and until the next regularly scheduled pick-up or removal of such items, or five (5) days, whichever occurs first. All equipment and containers for the storage or other disposal of such material shall be kept in clean and sanitary condition. No incinerators may be erected or maintained in the Addition. Materials incident to construction of improvements may be stored on lots during construction so long as construction progresses on such lots without delay.

(h) No garage or other out-building (except for sales offices and construction trailers owned and used by the Developer or Builder on a lot in accordance with the provisions of

Section 3.4(m) below) shall be occupied by any owner, tenant or other person on a lot prior to the erection and completion of a residence on such lot.

(i) Except as provided in Section 3.4(m) below, no lot, residence or improvement shall be used for business, professional, commercial or manufacturing purposes of any kind. Except in connection with the activities of Developer and Builders described in Section 3.4(m) below, no activity, whether for profit or not, shall be conducted in the Addition which is not related to single-family residential purposes or the development, marketing, construction or sale of the land, lots or residences thereon. No noxious or offensive activity shall be undertaken within the Addition, nor shall anything be done which is or may become an annoyance or nuisance to the Addition or its residents. Nothing in this Section 3.4(i) shall prohibit an owner's use of a residence for quiet, inoffensive activities such as tutoring or giving art or music lessons so long as such activities do not violate the restrictions set forth above and do not materially increase the number of cars parked on the street or interfere with adjoining owners' use and enjoyment of their residences and yards.

(j) The drying of clothes in public view is prohibited. The owners and occupants of any lots at the intersections of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to public view shall construct a suitable enclosure to screen from public view equipment which is incident to normal residences, such as clothes drying equipment, yard equipment, lawn furniture, pool filtration or composting equipment and stored materials.

(k) Except within fireplaces in the main residential dwelling and except for outdoor cooking in safe and sanitary residential barbecue grills, no burning of anything shall be permitted anywhere within the Addition.

(l) No use shall be conducted in the Addition which could be violative of any deed restrictions, other encumbrances of record, zoning or planned use designation, or development or building restrictions or regulations imposed by the City or County, all as such may be applicable to the Addition from time to time. Furthermore, no use shall be conducted which shall conflict with FHA or VA regulations (if applicable) or any regulation or ordinance of any other applicable governmental entity or agency.

(m) Notwithstanding anything contained herein to the contrary, Developer or a Builder may temporarily use a residence, garage or trailer as a sales, marketing or construction office for the sole purpose of (i) enabling the Developer to develop, construct, market and sell its lots and residences in the Addition or in any other addition or subdivision owned by Developer, or (ii) enabling a Builder to construct, market and/or sell such Builder's residences in the Addition until such Builder's last residence in the Addition is sold; PROVIDED, HOWEVER, unless otherwise permitted by the Developer, a sales, marketing or construction trailer or office may only be constructed and used by or on behalf of a Builder in the Addition if such Builder owns at least five (5) lots in the Addition at the time the trailer or office is constructed or created, and then may only be used to construct, market and sell such Builder's residences in the Addition and may not be used to construct, market and sell such Builder's residences in any other addition, subdivision or location.

ARTICLE IV
CONSTRUCTION OF IMPROVEMENTS

Section 4.1 **General Standards**. All construction in the Addition shall be in accordance with the standards developed pursuant to Section 5.5 hereof, unless otherwise approved by the Developer or Committee (if formed) as provided in Article V hereof.

Section 4.2 **Garage Required**. Each residence shall have a private garage suitable for parking not less than two (2), nor more than four (4), standard size automobiles and, unless otherwise permitted by the Developer, Association (if formed) or Committee (if formed), each garage shall be attached to such residence, open to the front, side or rear of the lot and conform in appearance, design and materials to the main residence. No garage shall be enclosed or otherwise altered to prevent the parking of at least two (2) conventional automobiles completely within such garage unless an additional garage is constructed which meets the standards of this Article IV, is in compliance with existing City ordinances and is approved by the Developer or Committee (if formed). Enclosure of garages by Developer or a Builder for temporary marketing, sales, construction or office purposes is permitted hereby, provided such enclosures and offices are architecturally compatible with the residence and this Declaration and are used in accordance with the provisions of Section 3.4(m) hereof. If any garage is so enclosed by Developer or a Builder, such garage shall be converted to use solely for the parking of automobiles as described above prior to the sale or lease of such residence to the occupying owner.

Section 4.3 **Driveways**. All driveways shall be surfaced with concrete.

Section 4.4 **Construction Specifically Regulated**.

(a) No temporary dwelling, shop, trailer or mobile home of any kind nor any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos, lawn furniture and buildings as approved by Developer or the Committee (if formed) for storage of lawn or pool maintenance equipment, which may be placed on a lot only in areas not visible from any street adjacent to the lot) shall be permitted on any lot except that the Developer and any Builder may have temporary dwellings, trailers or improvements (such as a sales office and/or construction trailer) on a given lot in accordance with the provisions of Section 3.4(m) hereof. No building material of any kind or character shall be placed or stored upon the lot until the owner thereof is ready to commence construction of improvements thereon, and then such material shall be placed only within the property lines of the lot upon which the improvements are to be erected.

(b) No structure of a temporary character, such as a trailer, tent, shack, barn or other out-building, shall be used on any land at any time as a dwelling house; PROVIDED, HOWEVER, that Developer or any Builder may maintain and occupy model houses, sales offices and construction trailers in accordance with the provisions of Section 3.4(m) hereof.

(c) No individual water supply system (which is not part of the public water supply system serving the entire Addition) shall be permitted in the Addition.

(d) No individual sewage disposal system (which is not part of the public sewage disposal system serving the entire Addition) shall be permitted in the Addition.

(e) No air-conditioning apparatus shall be installed on the ground in front of a residence, visible from any public street or on the roof of any residence (unless screened by the roof structure in a manner approved by the Developer or Committee, if formed).

(f) Except with the prior written permission of the Developer or Committee (if formed), no antennas, dishes or other equipment for receiving or sending audio or video messages or transmissions shall be permitted in the Addition except antennas for private AM and FM radio reception and UHF and VHF television reception. All antennas shall be located inside the attic of the residence and one satellite dish or other similar instrument or structure may be placed in the back yard of each lot so long as it is completely screened from view from any street, alley, park or other public area.

(g) No fence (except as may otherwise be permitted herein or on any exhibits hereto), wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten (10) feet from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

(h) Except for children's playhouses, dog houses, greenhouses, gazebos and buildings (as approved by the Developer or Committee, if formed) for storage of lawn and pool maintenance equipment, no building previously constructed elsewhere shall be moved onto any lot, it being intended that only new construction be placed and erected thereon.

(i) Within platted easements on each lot, no permanent structures, paving (other than driveways, sidewalks and flatwork installed in compliance with all applicable codes and laws and the remaining provisions of this Section 4.4(i)), planting or materials shall be placed or permitted to remain which may damage or materially interfere with the installation, operation and maintenance of utilities or change, obstruct or retard the flow of water through or within drainage channels and/or easements.

(j) After Developer has developed the lots, the general grading, slope and drainage plan of a lot may not be altered, nor may any dams, berms, channels or swales be constructed or excavated, without the prior approval of Developer (or Committee, if formed), the City (if applicable) and other appropriate agencies having authority to grant such approval.

(k) No sign of any kind shall be displayed to the public view on or in front of any lot or on any Vehicle or Equipment on or in front of any lot except one (1) professional sign of not more than one (1) square foot, and one (1) sign of not more than five (5) square feet, advertising the lot and improvements thereon for rent or sale, or signs used by Developer or any Builder to advertise the land or lots and any improvements thereon during the development, construction and sales period. Any such signs must conform to the requirements of Section 4.12 hereof (if applicable) and may not (i) describe the condition of the residence or lot, (ii) describe, malign or refer to the reputation, character or building practices of Developer, Builder or any other lot owner, and (iii) discourage or otherwise impact or attempt to impact anyone's decision to acquire a lot or residence in the Addition. Declarant, Developer, Association (if formed) or their respective agents shall have the right to remove all signs, billboards or other advertising structures including, without limitation, political or private sale (such as "garage" sale) signs, that do not comply with this Section 4.4(k), and in so doing shall not be subjected to any liability for trespass or any other liability in connection with such removal.

(l) All containers and other facilities for trash disposal must be located and screened in a manner approved by the Developer or Committee (if formed).

(m) All exterior mechanical equipment, including, without limitation, heating, air conditioning and ventilation ("**HVAC**") equipment, shall be located and screened in a manner approved by the Developer or Committee (if formed). Without limiting the foregoing, no window air conditioning units shall be permitted in any residence on any lot.

(n) All construction shall comply at all times with this Declaration and all other applicable deed restrictions, encumbrances of record, zoning ordinances and requirements, planned use and development restrictions, building codes, FHA and VA requirements and regulations and all other applicable ordinances and regulations.

(o) All roof surfaces shall have at least (i) a six (6) foot to twelve (12) foot pitch or slope on the main structure, and (ii) a four (4) foot to twelve (12) foot pitch or slope on the garage and porches unless otherwise approved by the Developer or Committee (if formed).

Section 4.5 **Minimum Floor Area**. Except with respect to any Common Facilities or other buildings or structures constructed by the Developer on the Common Area (if any), the total air-conditioned habitable living area of the main residential structure on each lot, as measured to the outside of exterior walls, but exclusive of porches, garages, patios and detached accessory buildings, shall be not less than twelve hundred (1,200) square feet or the minimum habitable floor area as specified by the City, whichever is greater.

Section 4.6 **Approved Materials**.

(a) Except with respect to any Common Facilities or other buildings or structures (if any) constructed by the Developer on the Common Area (if any), and except as otherwise approved by the Committee, the exterior of each residential structure must be faced on all sides with either stone, brick, stucco or a siding approved by the Committee.

(b) The exterior surfaces of the chimney chases shall be fully enclosed by materials approved by the Developer or Committee (if formed).

(c) Roofing materials may be wood shingle, slate, tile or composition or asphalt roofing material, which composition or asphalt roofing material is restricted to material weighing a minimum of one hundred ninety (190) pounds per one hundred (100) square feet of area, unless otherwise approved by the Developer or Committee (if formed); PROVIDED, HOWEVER, all such roofing materials shall conform to applicable City, FHA and VA requirements.

Section 4.7 **Side, Front and Rear Setback Restrictions**. No dwelling shall be located on any lot nearer to the front or rear lot line or nearer to the side lot line than the minimum setback lines shown on the Plat or required by the City. In any event, no building shall be located on any lot nearer than twenty (20) feet to, nor further than forty (40) feet from, the front lot line, nor nearer than five (5) feet to any interior side lot line, nor on corner lots nearer than ten (10) feet to the side property line adjoining the street unless approved by Developer or the Committee (if formed) and all applicable governmental agencies and authorities. For all purposes of this Section 4.7, eaves, steps and open porches shall not be considered as a part of the building; PROVIDED, HOWEVER, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot or to vary from any applicable City requirements.

Section 4.8 **Waiver of Front Setback Requirements**. With the prior written approval of the Developer or Committee (if formed) and the City (if required), any building may be located further back from the front property line of a lot than provided in **Section 4.7** where, in the opinion of the Developer or Committee (if formed), the proposed location of the building will add to the appearance and value of the lot and will not substantially detract from the appearance of the adjoining lots.

Section 4.9 **Fences and Walls**. The location and type of any fence or wall must be approved by the Developer or Committee (if formed) and must be constructed of masonry, brick, wood or other material approved by the Developer or Committee (if formed) and must comply with all applicable governmental requirements and ordinances and all provisions of this Declaration. Except as approved by the Developer or Committee (if formed) or as otherwise set forth herein, no fence or wall shall be permitted to extend nearer to the front street than (i) forty-five (45) feet from the front street, or (ii) the front of the house, whichever distance is further. Except as approved by the Developer or Committee (if formed) or as otherwise set forth herein or on the exhibits attached

hereto, no portion of any fence shall be more than six (6) feet in height. Except as approved by the Developer or Committee (if formed) or as otherwise set forth herein or on any exhibits attached hereto, no structural supports of any fence shall be visible from any public right-of-way.

Section 4.10 **Sidewalks**. All sidewalks shall conform to all applicable City, FHA and VA specifications and regulations.

Section 4.11 **Mailboxes**. Mailboxes shall be constructed of a material and design approved by the Developer or Committee (if formed) and the United States Postal Service.

Section 4.12 **Signs Advertising the Addition or Lots**. All signs advertising the entire land or any substantial part thereof shall be approved by the Developer or Committee (if formed). All signs shall be maintained in good condition and repair, with a neat and orderly appearance, and shall comply with the applicable ordinances of the City. All signs advertising the Addition shall be removed after all buildings to be initially constructed on the advertised lot(s) have been sold. Developer, the Association (if formed) or the Committee (if formed) may remove from the Addition or any surrounding area any signs which do not comply with this Section 4.12.

Section 4.13 **Landscaping/Fencing Plans**. Any person or entity (other than the Developer) planning to landscape or fence areas in the Addition (other than individual lots) shall prepare and submit to the Developer or the Committee (if formed) for approval, pursuant to the procedures set forth in Article V, a landscaping/fencing plan for such areas in the Addition prior to undertaking any landscaping or fencing in the Addition. Without limiting the requirement to obtain approval as noted above, such plan shall be compatible with the existing landscaping or fencing improvements and treatments, if any, in the Addition, and shall be in compliance with the terms and provisions hereof.

Section 4.14 **Destruction**. Any improvements on any lot which are fully or partially destroyed or damaged by fire, storm or any other peril shall be fully rebuilt and repaired or the debris therefrom fully removed, within a reasonable period of time not to exceed one hundred eighty (180) days after the occurrence of such destruction or damage, unless a written extension is obtained by the owner of such lot from Developer and the Committee (if formed).

Section 4.15 **Developer Approval**.

(a) Prior to the formation of the Committee (if ever) and during any periods of time after such formation that the Committee no longer exists, all consents and approvals reserved to the Developer shall be made solely by the Developer.

(b) All consents and approvals reserved to the Developer may be made and provided by the Committee (if formed) or the Association (if formed) only after the Developer has relinquished its duties hereunder to the Committee or Association or sold or otherwise disposed of all its interest in all of its lots and other property in the Addition.

ARTICLE V
ARCHITECTURAL CONTROL COMMITTEE

Section 5.1 **Appointment**. The Architectural Control Committee (the "**Committee**") consisting of three (3) members may, but shall not be obligated to, be formed only by the Developer during the period of time that Developer owns any interest in any lot, and thereafter (a) by the Board members of the Association (if formed), or (b) by the lot owners representing a majority of the lots. If the Committee is formed by the Developer, then (i) Developer shall initially designate and appoint the members to the Committee, each appointee to be generally familiar with the residential and community development design matters within other additions with which Developer has been associated and knowledgeable about those concerns articulated in this Declaration, and (ii) within ninety (90) days after the date that all of the lots have been sold by the Developer, the Board (if the Association has been formed and is in existence as of such date) or the lot owners (if the Association has not been created or is no longer in existence as of such date) shall (A) confirm and approve the membership of the Committee, or (B) subject to the proviso following this subparagraph (B), appoint one (1) or more successor members of its/their own choosing to the Committee, with such succession to be effective thirty (30) days after such appointment of such successor(s); PROVIDED, HOWEVER, notwithstanding anything contained in the preceding subparagraph (B) or elsewhere in this Declaration to the contrary, as long as the Developer owns any lot(s) in the Addition, the Developer shall be entitled to appoint all members of the Committee.

Section 5.2 **Term; Successors; Compensation; Liability**.

(a) Each member of the Committee shall serve on the Committee until such member resigns or is removed by the party who appointed such member to serve on such Committee. Without limiting the foregoing, the appointing party may remove its appointed member of the Committee at any time for any reason.

(b) In the event of the death, resignation or removal by the appointing party of any member of the Committee, such appointing party shall have full authority to designate and appoint a successor within a reasonable period of time. If no such appointment is made on a timely basis, the remaining member(s) of the Committee shall appoint a successor member.

(c) No member of the Committee shall be entitled to compensation for, or be liable for claims, causes of action or damages arising out of, services performed pursuant to this Declaration.

Section 5.3 **Authority**.

(a) After the initial platting of the land in the Addition, the Addition shall not be replatted or resubdivided, no landscaping shall be undertaken and no building, fence, wall or other structure shall be commenced, erected, placed, maintained or altered on any lot, nor shall any exterior painting of, exterior addition to, or alteration of, such items be made by any party (other than

Developer) until all plans have been approved by Developer, and if a Committee has been formed and is in existence as of such date then until all plans therefor have been submitted to and approved in writing by a majority of the members of the Committee, as to:

(i) conformity and harmony of the proposed replat and any landscape plan to the existing development in the Addition, surrounding areas, community standards and other developments with which Developer is associated;

(ii) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design and proper facing of main elevation with respect to nearby streets;

(iii) conformity and harmony of the external design, color, type and appearance of exterior surfaces and landscaping in relation to the various parts of the proposed improvements and in relation to improvements on other lots in the Addition; and

(iv) the other standards set forth within this Declaration or matters in which Developer or the Committee (if formed), whichever applies, has been vested with the authority to render a final interpretation and decision.

Without limiting the foregoing, Developer or the Committee (if formed), whichever applies, is authorized and empowered to consider and review any and all aspects of platting, construction and landscaping which may, in the reasonable opinion of such party, affect the living enjoyment of one or more lot owners or the general value of lots in the Addition. In considering the harmony of external design between existing structures and a proposed building being erected, placed or altered, the Developer or the Committee (if formed), whichever applies, shall consider only the general appearance of the proposed building as that can be determined from front, rear and side elevations on submitted plans.

(b) Developer, or the Committee (if formed) acting pursuant to a majority vote of its members, whichever applies, shall have the right, power and authority to enforce the covenants, conditions, restrictions and all other terms contained in this Declaration relating to the matters within its purview as set forth herein. If the Developer fails or refuses to enforce this Declaration as stated above, then the Association (if formed) shall have the right, power and authority to enforce this Declaration.

Section 5.4 **Procedure for Approval**.

(a) Each of the following documents (and all modifications thereof) must be submitted to the Developer or the Committee (if formed), whichever applies, and such party's approval must be obtained, prior to the document's submission to the City or implementation:

(i) preliminary replat;

(ii) final replat;

(iii) engineering plans and specifications;

(iv) landscaping, fencing and general development plans; and

(v) architectural, building and construction plans for each residence, showing the nature, kind, shape, height, materials and location of all landscaping and improvements on each lot, and specifying any requested variance from the setback lines, garage location or other requirements set forth in this Declaration, and, if requested by Developer or the Committee (if formed), samples of proposed construction materials.

(b) All documents must be submitted in duplicate and must be sent to Developer or the Committee (if formed) by hand delivery or certified mail; PROVIDED, HOWEVER, Developer shall not be obligated to submit or obtain approval of such documents as long as the Developer owns any lot(s) in the Addition. At such time as the submitted documents meet the approval of Developer or the Committee (if formed), one complete set of the submitted documents will be retained by such party and the other complete set shall be marked "Approved", signed by such party and returned to Builder or its respective designated representative. If disapproved by such party, one set of documents shall be returned marked "Disapproved" and shall be accompanied by a statement of the reasons for disapproval, which statement shall be signed by such party. Such party's approval or disapproval shall be in writing. In no event shall such party give oral approval of any documents. Notwithstanding the foregoing, if such party fails to respond to any submitted documents within ninety (90) days after the date of submission, the matters submitted shall be deemed to be approved.

Section 5.5 **Standards**. Developer or the Committee (if formed), whichever applies, shall use its best efforts to promote and ensure a high level of taste, design, quality, harmony and conformity throughout the Addition consistent with the standards set forth in this Declaration, provided that such party shall have sole discretion with respect to taste, design and all standards specified herein. One objective of such party is to conform generally with community standards and prevent unusual, radical, curious, odd, bizarre, peculiar or irregular structures from being built or maintained in the Addition. Such party shall also have the authority, among other things, to require at a minimum a six (6) to twelve (12) foot roof pitch or slope on the main structure of the residence (subject to such party's ability to permit slight variances for garage and porch roof pitch or slope), to prohibit the use of lightweight composition roof material, to require that the colors of roofing materials be earth tones, to require the use of certain types of divided light windows (such as bronzed, white or black), to prohibit or regulate the use of solar or heating panels, to regulate the construction and maintenance of awnings and generally to require that any plans meet the standards of the existing improvements on neighboring lots. Such party may from time to time publish and

promulgate bulletins regarding architectural standards, which shall be fair, reasonable and uniformly applied and shall carry forward the spirit and intention of this Declaration.

Section 5.6 **Termination**. The Committee shall cease to exist on the date on which, with the prior written approval of Developer (if the Committee was created and sanctioned by the Developer and the Developer has not relinquished control or its right to give such approval) or the Board (if the Association has been formed and is still in existence as of such date) or the lot owners representing a majority of the votes of the lot owners (if the Association has not been created or is no longer in existence as of such date and the Developer has relinquished control or its right to give such approval), all the members of the Committee file a document declaring the termination of the Committee. If there is no Committee in authority, then no approval by the Committee shall be required under this Declaration, and variations from the standards set forth in this Declaration shall then be made in accordance with the general development standards as reflected in the approved plans, construction materials, landscaping and other matters (i) by Developer, and (ii) by the Association (if formed) if the Developer fails to take action relating thereto or after the Developer has relinquished control hereunder.

Section 5.7 **Liability of Developer and the Committee**.

(a) Developer and the members of the Committee shall have no liability for design defects, nor for decisions made by them so long as such decisions are made in good faith and are not discriminatory, arbitrary or capricious. Any errors in or omissions from the documents submitted to the Developer or Committee (if formed) shall be the responsibility of the entity or person submitting the documents, and Developer or Committee (if formed) shall have no obligation to check for errors in or omissions from any such documents, or to check for such documents' compliance with the general provisions of this Declaration, City codes and regulations, FHA or VA regulations, state statutes or the common law, whether the same relate to lot lines, building lines, easements or any other issue.

(b) Declarant and Developer shall have no responsibility or liability for (i) the creation, selection, management or operation of the Committee, (ii) any actions taken or omitted to be taken by or on behalf of the Committee as a result of, in connection with, under or pursuant to this Declaration or the Addition, or (iii) any liabilities, obligations, debts, actions, causes of action, claims, debts, suits or damages incurred by or on behalf of or arising in connection with the Committee, the Addition or the duties and obligations of the Committee pursuant to this Declaration.

ARTICLE VI
INTENTIONALLY OMITTED

ARTICLE VII
MAINTENANCE

Section 7.1 **Property and Lot Maintenance**. Prior to completion of the development of the entire Addition and construction of a residence on each lot, all vacant lots and undeveloped portions of the Addition shall be kept mowed and free of trash and construction debris by the owner thereof. From and after the completion of construction of a residence on a lot, the owner and occupant of each lot shall cultivate an attractive ground cover or grass on all areas visible from the street, shall maintain all areas in a sanitary and attractive manner and shall edge the street curbs that run along the property line and the sidewalks and driveway located on the lot. Grass, weeds and vegetation on each lot must be kept mowed at regular intervals so as to maintain the property in a neat and attractive manner. No vegetables shall be grown in any yard that faces a street unless completely screened from public view by fences which comply with the provisions of this Declaration. No owner shall permit weeds or grass to grow to a height of greater than six (6) inches upon its lot. Upon failure of the owner of any lot to maintain such lot (whether or not developed), Developer may, at its option, have the grass, weeds and vegetation cut as often as necessary in its judgment, and the owner of such lot shall be obligated, when presented with an itemized statement, to reimburse Developer for the cost of such work. In the event Developer shall fail to exercise its right granted under the preceding sentence within ten (10) days following written notice to Developer from the Association (if formed) or the City stating the Association's or City's intent to exercise such right, the Association or City, whichever applies, shall have the right, in lieu of Developer, to have the grass, weeds and vegetation cut as provided above, and upon exercise of such right, the owner of such undeveloped property or the owner of the lot in question shall be obligated, when presented with an itemized statement, to reimburse the Association or City, whichever applies, for the cost of such work. These provisions shall be construed to create a lien in favor of the performing party against such property for the cost of such work or the reimbursement sought for such work performed on such property. In the event that the Association has not been formed or is no longer in existence, then the rights of the Association described herein may be exercised by the lot owners as set forth in Section 11.7(b) herein.

Section 7.2 **Maintenance of Improvements**. Subject to the provisions of this Article VII, each owner shall maintain the exterior of all buildings, fences, walls and other improvements on his lot in good condition and repair, shall replace worn and rotten parts, shall regularly repaint all painted surfaces and shall not permit the roofs, rain gutters, downspouts, exterior walls, windows, doors, walks, driveways, parking areas or other exterior portions of the improvements to deteriorate. Upon failure of the owner of any lot to maintain the exterior of all buildings, fences, walls and other improvements on his lot, Developer may, at its option, perform such maintenance as often as necessary in its judgment, and the owner of such lot shall be obligated, when presented with an itemized statement, to reimburse Developer for the cost of such maintenance work. In the event Developer shall fail to exercise its right granted under the preceding sentence within ten (10) days following written notice from the Association (if formed) to Developer of the Association's intent to exercise such right, the Association shall have the right, in lieu of Developer, to perform such maintenance as provided above, and upon exercise of such right, the owner of such lot in question

shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such maintenance work. These provisions shall be construed to create a lien in favor of the performing party against such lot for the cost of such work or the reimbursement sought for such work performed on such lot. In the event that the Association has not been formed or is no longer in existence, then the rights of the Association described herein may be exercised by the lot owners as set forth in Section 11.7(b) herein.

ARTICLE VIII
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION AND VOTING RIGHTS OF THE LOT OWNERS

Section 8.1 **Membership in the Association**. In the event the Association is formed and created, then, upon formation and creation of the Association, every owner of a lot shall be a member of the Association, which shall function as a homeowners' association for the owners of lots in the Addition. Membership shall be appurtenant to, and shall not be separated from, ownership of a lot.

Section 8.2 **Voting Rights**.

(a) In the event the Association is formed and created, the Association shall have two (2) classes of voting membership:

(i) Class A. Class A members shall be all owners (other than Class B members) and shall be entitled to one (1) vote for each lot. When more than one (1) person holds an interest in any lot, all such persons shall be members, but the vote for such lot shall be exercised as they among themselves determine, and in no event shall more than one (1) vote be cast with respect to any lot.

(ii) Class B. Class B member(s) shall be the Developer(s), who shall be entitled to four (4) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

(b) In the event the Association is not created or is no longer in existence as of a particular date, then, on all matters submitted to or which must be approved by the lot owners, (i) Developer shall be entitled to four (4) votes for each lot (or proposed lot) owned by the Developer, and (ii) the other owner(s) of each lot shall be entitled to one (1) vote for each lot. In this regard, any reference in this Declaration to approval or action by the lot owners shall require the affirmative vote of such lot owners taking into account the weighted voting set forth above.

(c) Notwithstanding anything seemingly to the contrary contained in this Declaration, the Developer shall have the right to maintain absolute and exclusive control of the Association and the Design Review Committee, including appointment and removal in Developer's

sole discretion of all officers and directors of the Association and all members of the Design Review Committee prior to the Turnover Date.

Section 8.3 **Board of Directors**.

(a) If the Association is created, the members of the Association shall elect the board of directors (the "**Board**") of the Association subject to the provisions of subparagraph (b) hereof, and the Board shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the articles of incorporation or bylaws of the Association. Notwithstanding the above provision, for three (3) years after the date hereof, the Developer or Committee (if formed) must approve any decisions made by the Board. From and after the date set forth in Section 5.1, the Board shall appoint the Committee in the manner set forth in Section 5.1 hereof.

(b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in this Declaration to the contrary, prior to the Turnover Date, the Developer shall be entitled to appoint all of the members of the Board.

Section 8.4 **Bylaws**. The Association (if created) may make whatever rules and bylaws it deems desirable to govern the Association and its members; PROVIDED, HOWEVER, any conflict between such bylaws and the provisions hereof shall be controlled by the provisions hereof.

Section 8.5 **Inspection Rights**. Each owner shall have the right to inspect and examine the books, records and accounts of the Association at reasonable times upon reasonable written notice, PROVIDED that such inspection and examination shall be at such owner's sole cost and expense.

ARTICLE IX
ASSESSMENTS

Section 9.1 **Creation of Lien and Personal Obligation of Assessments**. No mandatory assessments shall be due prior to the date of formation of the Association unless otherwise determined by Developer. From and after the date of formation of the Association or when otherwise determined by Developer, Developer, for each fully developed lot in the Addition, hereby covenants, and each owner (other than the Developer), by acceptance of a deed to a lot, is deemed to covenant and agree, to pay to an account or fund established by Developer or the Association (if the Association has been formed and is in existence as of such date) (a) annual assessments, and (b) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs of collection and reasonable attorneys' fees, shall be a charge on each lot and, ifunpaid as described in Section 9.5, shall constitute a continuing lien upon the lot against which each such unpaid assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, shall be the personal obligation of the owner of such lot at the time when the assessment came due. The personal obligation for delinquent assessments shall not pass to such owner's successors in title unless

expressly assumed by them, provided that the lien for such assessments shall continue and may be enforced against the lot.

Section 9.2 **Annual Assessment**.

(a) From and after the date of formation of the Association or when otherwise determined by Developer, each lot shall hereby be subjected to an annual assessment for the purpose of creating a fund to be designated and known as the "**maintenance fund**". The annual assessment will be paid to an account or fund established by Developer or the Association (if the Association has been formed and is in existence as of such date) annually in advance by the owner of each lot or in such periodic intervals and methods as are established by Developer or the Board from time to time. The assessment per lot for the year in which the assessments begin shall be established by (i) Developer if (A) the Association has not been created or is no longer in existence as of such date, or (B) the Developer creates the Association, or (ii) the lot owners representing at least seventy-five percent (75%) of the lots (taking into account the weighted voting described herein) if (A) the lot owners create the Association, or (B) the Developer no longer owns any property in the Addition and the Association has not been created or is no longer in existence as of such date. Without limiting the foregoing, the annual assessments shall be sufficient to fund the purposes, uses and benefits described in Section 9.3.

(b) The assessment for a particular lot for the calendar year in which the assessment begins shall be prorated for such calendar year for the period commencing on the date a person initially occupies a completed residence on a lot, and ending on December 31 of such calendar year. The rate at which each lot will be assessed for subsequent years will be determined annually by the Developer or the Board (if the Association has been formed and is in existence as of such date) at least thirty (30) days in advance of each annual assessment, PROVIDED that, without a vote of the membership (if the Association has been formed and is in existence as of such date) as described in the next sentence, the annual assessment, if created by the Association, may not be increased by the Board in any year by an amount in excess of ten percent (10%) above the previous year's annual assessment. The annual assessment may be increased to an amount in excess of ten percent (10%) of the assessment for the previous year by Developer (if the Association has not been created or is no longer in existence as of such date) or by the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present (if the Association has been formed and is in existence as of such date). The notice and quorum requirements for such meeting are the same as those set forth in Section 9.4 for special assessments for capital improvements. The assessments for each lot shall be uniform. The Association (if the Association has been formed and is in existence as of such date) shall, upon demand and upon payment of a reasonable fee, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid.

Section 9.3 **Purposes**. Developer or the Association (if formed), whichever applies, shall use the proceeds of the maintenance fund for the use and benefit of the Addition. Such uses and benefits may include, by way of example and not limitation, any and all of the following:

(a) maintaining, operating, managing, repairing, replacing or improving the Common Facilities and all landscaping, lighting, sprinkler systems, recreational facilities, walls, fences, subdivision monuments, signs and other features located in any Common Areas owned by Developer or the Association, whichever applies (the Recreational Center, if any, and all of the items and features referenced in this subparagraph (a) are hereinafter collectively referred to as the "Common Area");

(b) mowing the grass, maintaining the gravel and maintaining signs in or adjoining any rights-of-way or easements in the event the City or County fails to maintain such areas;

(c) paying legal charges and expenses incurred in connection with the enforcement of all recorded charges and assessments, covenants, restrictions and conditions affecting the land to which the maintenance fund applies;

(d) paying reasonable and necessary expenses in connection with the collection and administration of the assessments; and

(e) paying insurance premiums for liability and fidelity coverage for Developer, Committee and/or the Association and/or their officers and directors, employing policemen and watchmen, caring for the Common Facilities and vacant lots and doing any other things which are necessary or desirable in the opinion of Developer or the Board, whichever applies, to keep the lots neat, secure and in good order, or which are considered of general benefit to the owners or occupants of the Addition, which may include contracting for residential trash pick up, it being understood that the judgment of Developer or the Board, whichever applies, in the expenditure of said funds shall be final and conclusive so long as such judgment is exercised in good faith.

(f) the costs of utilities (including water, electricity, gas and sewer provided directly to the Developer or the Association and not individually metered or billed by the service providers directly to the Lots) and other services provided by the Developer or Association which generally benefit and enhance the value and desirability of the Addition;

(g) reasonable reserves for major items, contingencies, replacements and other purposes as deemed appropriate by the Developer or Association;

(h) taxes, assessments and other governmental impositions paid by the Developer or the Association for Common Areas; and

(i) the costs of any other items or services to be provided or performed by the Developer or the Association as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws, or in furtherance of the purposes of the Association.

Section 9.4 **Special Assessments for Capital Improvements**.

(a) In addition to the annual assessments authorized above, the Developer (if the Association has not been formed or is no longer in existence as of such date) or the Association (if the Association has been formed and is in existence as of such date) may levy, in any calendar year after the date of formation of the Association or when otherwise determined by Developer, a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any indemnification set forth in the Articles of Incorporation or Bylaws for the Association (if formed) and any construction, reconstruction, repair or replacement of any Common Facilities or a capital improvement on or to the Common Area (if any) in that same or immediately subsequent calendar year, including walls, fences, lighting, subdivision monuments, signs and sprinkler systems.

(b) After the Turnover Date, any special assessment made by the Association pursuant to this Section 9.4 must have the assent of two-thirds (2/3rds) of the votes of members entitled to vote who are voting in person or by proxy at a meeting duly called for this purpose not less than ten (10) days nor more than fifty (50) days in advance of such meeting. At the first such meeting called by the Association, the presence of members (in person or by proxy) entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, provided that the required quorum at the subsequent meeting shall be one-half (1/2) of the minimum required quorum for the preceding meeting. Notwithstanding anything contained herein to the contrary, as long as the Class B membership exists, a quorum shall be met at any meeting called by the Association pursuant to this Section 9.4 if a majority of the Class B votes is present in person or by proxy at such meeting regardless of the presence of any Class A members or votes. No rescheduled meeting shall be held more than fifty (50) days following the preceding scheduled meeting.

Section 9.5 **Effect of Nonpayment of Assessments; Remedies of Developer or the Association**. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid in full at the Prime Rate from time to time published in The Wall Street Journal plus four percent (4%) per annum, but in no event in excess of the maximum rate allowed by applicable law. Developer (if the Association has not been created or is no longer in existence as of such date) or the Association (if the Association has been formed and is in existence as of such date) may bring an action at law against the lot owner personally obligated to pay the same, may foreclose the lien against the lot and/or may pursue any other legal or equitable remedy available to it. No owner may waive or otherwise avoid liability for the assessment provided for herein by nonuse of any Common Area or by abandonment of its lot.

Section 9.6 **Subordinated Lien to Secure Payment**. The lien on any particular lot created as the result of the non-payment of any assessment provided for herein shall only be subordinate to the liens of any valid first lien mortgage or deed of trust secured by such lot. Sale or transfer of any lot shall not impair the enforceability or priority of the assessment lien against such lot.

Section 9.7 **Duration**. The assessments will remain effective for the full term (and extended term, if applicable) of the Declaration, provided that no assessments may be made against the Declarant or Developer, or any lots owned by Declarant or Developer, for any periods prior to the date the Association is formed or when otherwise determined by Developer.

Section 9.8 **Declarant and Developer Not Liable for Association Deficits**. Notwithstanding anything contained in this Declaration to the contrary, Declarant and Developer shall not be liable for any liabilities, obligations, damages, causes, causes of action, claims, debts, suits or other matters incurred by or on behalf of the Association or lot owners or for any deficits or shortfalls incurred or realized by or on behalf of the Association or lot owners in connection with the Addition or this Declaration. Declarant's and Developer's sole liability and obligation hereunder shall be limited to the assessments assessed against any lots owned by the Declarant or Developer, whichever applies.

ARTICLE X
PROPERTY RIGHTS IN COMMON AREA

Section 10.1 **Property Rights in Common Area**. The Developer, Association (if formed) and their successors, assigns, contractors, agents and employees shall have the right and easement to enter upon the Common Area (if any) for the purpose of exercising the rights set forth in this Declaration.

Section 10.2 **Common Area Easements**. Every owner shall have a non-exclusive right and easement of enjoyment in and to any Common Area, which right shall be appurtenant to and shall pass with the title to every lot, subject to the right of the Developer or Association (if formed) to dedicate or transfer all or any part of any Common Area to any public agency, authority or utility company for such purposes and subject to such conditions as may be agreed to by the Developer or Board (if the Association is formed) or to mortgage all or any portion of the Common Area; PROVIDED, HOWEVER, that no such dedication, transfer or mortgage shall be effective unless an instrument has been recorded and has been signed by two-thirds (2/3rds) of (i) the votes allocated to the lot owners as provided herein (if the Association is not formed or is no longer in existence as of such date), taking into account the weighted voting described herein, and (ii) each class of members evidencing their agreement to such dedication or transfer (if the Association has been formed and is in existence as of such date). In addition, if FHA or VA approval is obtained for the lots to permit HUD insured mortgages for home purchases, then no such dedication, transfer or mortgage of all of any portion of the Common Areas shall be effective without the approval of at least two-thirds (⅔) of the owners of the lots (exclusive of Developer). In addition, if the only ingress or egress to or from any Lot (the "Affected Lot") is through a Common Area, then no conveyance or encumbrance of such portion of the Common Area may be entered into without such conveyance or encumbrance being subject to the ingress and egress rights of the Affected Lot.

Section 10.3 **Delegation of Rights**. Any owner may delegate, in accordance with this Declaration or the bylaws of the Association, his right of enjoyment to the Common Area (if any) and facilities to the members of such owner's family or to persons residing on the lot under a lease or contract to purchase.

Section 10.4 **Conveyance of Common Area to Association**. The Developer shall convey the Common Area (if any) to the Association (if formed), free and clear of any encumbrances other than those existing when Developer acquired the property, reasonable utility easements and other encumbrances as may be created by this Declaration or imposed by the City, County or other applicable governmental authority (a) within a reasonable period of time after any improvements on the Common Area are completed, or (b) if later, and at Developer's sole option, within a reasonable period of time after Developer sells its last lot and all of its other portions of the land (other than the Common Area) in the Addition.

Section 10.5 **Dissolution of the Association**. The Association may be dissolved by a written assent signed by the lot owners representing not less than two-thirds (2/3) of the votes of each class of members. In the event the Association is dissolved, the Common Area (if any) shall be conveyed to either (a) another non-profit corporation, association, trust or other organization devoted to purposes similar to those of the Association, or (b) an appropriate governmental agency to be used for purposes similar to those for which the Association was created.

ARTICLE XI
GENERAL PROVISIONS

Section 11.1 **Utility Easements**. Easements for the installation and maintenance of utilities and drainage facilities are reserved and shown on the Plat. Easements are or will be also reserved on the Plat for the installation, operation, maintenance and ownership of utility service lines from the lot lines to the residences. Developer reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically developing the land and installing improvements in the Addition. The owner of a lot shall mow weeds and grass and shall keep and maintain in a neat and clean condition any easement which may traverse a portion of the owner's lot.

Section 11.2 **Recorded Plat**. All dedications, limitations, restrictions and reservations shown on the Plat(s) are and shall be incorporated herein and shall be construed as being adopted in each contract, deed or conveyance executed or to be executed by Developer or any Builder or other owner conveying lots in the Addition whether specifically referred to therein or not.

Section 11.3 **Mortgages**. It is expressly provided that the breach of any of the conditions in this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, as to the same premises or any part thereof encumbered by such mortgage or deed of trust, but said conditions shall be binding thereto as to lots acquired by foreclosure, trustee's sale or otherwise, but only as to any breach occurring after such acquisition of title.

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Section 11.4 **Term**. The foregoing covenants and restrictions shall run with and bind all land within the Addition and shall remain in full force and effect for a term of thirty (30) years after this Declaration is recorded, and shall be automatically extended for successive periods of ten (10) years unless amended as provided herein.

Section 11.5 **Severability**. If any condition, covenant or restriction herein contained shall be invalid, which invalidity shall not be presumed until the same is determined by the unappealable judgment or order of a court of competent jurisdiction, and such invalidity shall in no way affect any other condition, covenant or restriction, each of which shall remain in full force and effect.

Section 11.6 **Binding Effect**. Each of the conditions, covenants, restrictions and agreements herein contained is made for the mutual benefit of, and is binding upon, each and every person acquiring any part of the land within the Addition, it being understood that, except as otherwise expressly provided herein with respect to Declarant, Developer and the Committee (if formed), such conditions, covenants, restrictions and agreements are not for the benefit of the owner of any land except land in the Addition. This instrument, when executed, shall be filed of record in the deed records of the County so that each and every owner or purchaser of any portion of the land within the Addition is on notice of the easements, conditions, covenants, restrictions and agreements herein contained.

Section 11.7 **Enforcement**.

(a) Except as limited or restricted hereby, Declarant, Developer, the Committee (if formed), Association (if formed) and the owners of each lot and any portion of the land within the Addition shall have the easement and right to have each and all of the foregoing restrictions, conditions and covenants herein faithfully carried out and performed with reference to each and every portion of land within the Addition, together with the right to bring any suit or undertake any legal process that may be proper to enforce the performance thereof, it being the intention hereby to attach to each portion of land within the Addition, without reference to when it was sold, the right and easement to have such restrictions, conditions and covenants strictly complied with, such right to exist with the owner of each portion of the land within the Addition and to apply to all lots in the Addition. Failure by any owner, Declarant, Developer, Committee (if formed) or Association (if formed) to enforce any covenant or restriction herein contained or to take any action herein permitted shall in no event be deemed a waiver of the right to do so thereafter. The rights of enforcement granted Declarant, Developer, Committee (if formed) and Association (if formed) under this Declaration are personal rights and in no other event shall the owner of any land except land in the Addition have any right of enforcement with respect to this Declaration. In addition, the restrictions, conditions and covenants set forth herein may be enforced by the Building Inspector (or official performing similar functions) of the City, and such Building Inspector is hereby authorized to refuse or revoke all permits for the construction of any improvements on any lot if the proposed improvements on such lot do not strictly comply with such restrictions, conditions and covenants.

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(b) Notwithstanding anything contained herein to the contrary, all consents, approvals and actions reserved to or permitted to be taken or made by the Association may be taken, made or provided by the lot owners only if (i) the Association has not been created or is no longer in existence as of such date, or (ii) if the Association has been created and is in existence as of such date, the Association elects not to exercise such rights, easements and authority. In such event, the lot owners may take such action by the requisite vote of such lot owners as provided herein.

Section 11.8 **Other Authorities**. If other authorities, such as the City or County, impose more demanding, extensive or restrictive requirements than those set forth herein, the requirements of such authorities shall govern. Other authorities' imposition of lesser requirements than those set forth herein shall not supersede or diminish the requirements herein.

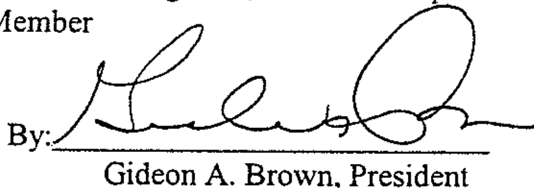
Section 11.9 **Addresses**. Any notices or correspondence to an owner of a lot shall be addressed to the street address of the lot. Any notices or correspondence to the Developer or Committee (if formed) shall initially be addressed to the Developer or Committee, whichever applies, at the address of the Developer, or to such other address as is specified by the Developer or Committee, whichever applies, pursuant to an instrument recorded in the deed records of the County. Until an instrument is subsequently recorded setting forth a different address for Developer, notices to Developer shall be sent to: Parkwood Four, LC, 9156 W. 135th Street, Overland Park, Kansas 66211, Attn: Mr. Gideon A. (Gabe) Brown.

EXECUTED by the Declarant on the date shown in the acknowledgements below, to be effective as of Nov. 21st, 2002.

DECLARANT:

PARKWOOD FOUR, LC, a Kansas limited liability company.

By: B & R Building, Inc., a Kansas corporation, Managing Member



By: ______________________
Gideon A. Brown, President

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NOVEMBER 21, 2002

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STATE OF Kansas)
) ss:
COUNTY OF Johnson)

On this 27th day of November, 2002, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Gideon A. Brown, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me duly sworn, stated that he is the President of B & R Building, Inc., a Kansas corporation, Managing Member of PARKWOOD FOUR, LC, a Kansas limited liability company, and that said instrument was signed on behalf of said company and corporation by authority of all of its members, and said person acknowledged said instrument to be the free act and deed of said company and corporation.

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

Trish Charlons
NOTARY PUBLIC

My Commission Expires:

TRISH CHARLONS
Notary Public - State of Kansas
My Appt. Expires 8-27-05

EXHIBIT A

ADDITION LEGAL DESCRIPTION

Lots 1 through 34, inclusive, Symphony at Monticello, a subdivision in the City of Shawnee, Johnson County, Kansas.

EXHIBIT B

FUTURE PROPERTY

The Northeast Quarter of the Northeast Quarter of Section 10, Township 12, Range 23, in the City of Shawnee, Johnson County, Kansas, except that part in roads and except Lot 1, Sacred Heart of Jesus Catholic Church and School, a subdivision in the City of Shawnee, Johnson County, Kansas filed December 27, 1999, in Book 114, Page 20 of the plats.

ALSO EXCEPT that part platted as Symphony at Monticello, a subdivision in the City of Shawnee, Johnson County, Kansas filed July 1, 2002, in Book 125, Page 41 of the plats.

3684653

ANNEXATION DECLARATION
SYMPHONY AT MONTICELLO

THIS ANNEXATION DECLARATION is made and entered into this 31st day of July, 2003, by the undersigned Declarant, which is the "Developer" under the "Original Declaration" (hereinafter defined):

PURPOSE OF DECLARATION

The purpose of this Annexation Declaration is to subject the following described property (and such property is hereby made subject) to the Declaration of Covenants, Conditions and Restrictions for Symphony at Monticello filed with the Recorder of Deeds in Johnson County, Kansas on December 5, 2002 as Document #3525323, in Book 8416 at Page 558 (the "**Original Declaration**"), the terms of which are hereby adopted.

DESCRIPTION OF PROPERTY

The property affected by this Annexation Declaration (the "**Annexed Property**") is legally described on Exhibit A attached hereto and incorporated herein by reference.

This Annexation Declaration is being effected pursuant to Section 2.4 of the Original Declaration. The Original Declaration, as extended to the Annexed Property by this Annexation Declaration, shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed.

PARKWOOD FOUR, L.C., a Kansas limited liability company

By: ______________________

Gideon A. Brown, President

STATE OF KANSAS } SS
COUNTY OF JOHNSON }
FILED FOR RECORD
$10.00 2003 AUG -4 P 5:51
$6.00 REBECCA L. DAVIS
REGISTER OF DEEDS

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STATE OF KS)
) ss.
COUNTY OF Johnson)

On this 31st day of July, 2003, personally appeared Gideon A Brown as President of Parkwood Four, L.C., a Kansas limited liability company, to me personally known, who being sworn, did say that he/she is the President of Parkwood Four, L.C. and he/she acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in Johnson County, the day and year last above written.

[SEAL]

Denise Campanella
Notary Public
Name: ______________________

My Commission expires:

____

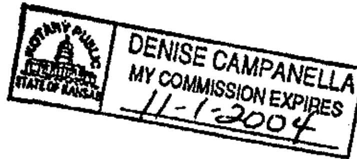

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EXHIBIT A

LEGAL DESCRIPTION

Lots 35 through 64, inclusive, Symphony at Monticello - Second Plat, a subdivision in the City of Shawnee, Johnson County, Kansas.

Tract B, Symphony at Monticello - Second Plat, a subdivision in the City of Shawnee, Johnson County, Kansas.

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