

Book: 864 Page: 6646



Riley County Scanning Label



Debra J. Register
Register of Deeds
Riley County, Kansas
Book: 864 Page: 6646
Receipt #: 195927 Total Fees: \$356.00
Pages Recorded: 44
Date Recorded: 11/17/2015 12:15:25 PM

COVER SHEET

TITLE OF DOCUMENT: Declaration of Easements, Covenants, Conditions and Restrictions for Grand Estates Community

DATE OF DOCUMENT: November 15, 2015

PARTIES: Grand Mere Development, Inc.
Thierer Construction, Inc.

LEGAL DESCRIPTION: Lots 1 through 12, Grand Estates Addition, an Addition in the City of Manhattan, Riley County, Kansas.

AFTER RECORDING RETURN TO:

Arthur-Green, LLP
Attn: William J. Bahr
801 Poyntz Avenue
Manhattan, Kansas 66502

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR GRAND ESTATES COMMUNITY**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS is made and entered into as of this 15th day of November, 2015, by Grand Mere Development, Inc., a Kansas corporation (hereinafter called the "Developer"), and Thierer Construction, Inc., a Kansas corporation (hereinafter called "Thierer").

NOTICE OF INTENT

This Declaration provides for an extensive degree of control in the Developer, including but not limited to: (i) control of the Association and supervision over the type and design of improvements which may be constructed within the Community and upon the Lots located therein (including fines for noncompliance); (ii) the right to amend this Declaration; and (iii) substantial flexibility in developing the Community. The provisions hereof also contain limitations on the liability of Thierer and the Developer. Each Owner, by accepting title to a Lot, and each Member, by accepting such membership, acknowledges, agrees to, and accepts the Developer's control of the Community and the limited liability of the Developer and Thierer provided for in this Declaration. Such control is an integral part of this Declaration and the general scheme of development and operation of the Community. Capitalized terms used in this and the following introductory paragraphs are defined in Article I of this Declaration.

WITNESSETH:

WHEREAS, the Developer is the developer of that certain real property situated in Manhattan, Riley County, Kansas, described on **Exhibit "A"** attached hereto and by reference made a part hereof; and

WHEREAS, Developer has previously transferred to Thierer the certain real property described on **Exhibit "B"** attached hereto, which shall constitute the Community; and

WHEREAS, it was understood by Thierer that in being the transferee of the above-described real property, said real property was to be made subject to this Declaration; and

WHEREAS, Developer and Thierer desire to submit and subject the Community, together with all buildings, improvements, and permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights contained herein; and

WHEREAS, Developer and Thierer deem it desirable to establish easements, covenants, conditions, obligations, and restrictions upon the Community and each and every portions thereof with respect to the proper use, occupancy, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Community; and

WHEREAS, Developer and Thierer deem it desirable for the efficient management of the Community, to create the Association which shall exercise the powers of: (i) administering and enforcing the easements, covenants, conditions, and restrictions set forth herein; (ii) collecting and disbursing funds pursuant to the Assessments, spending procedures, and charges hereinafter created; and (iii) performing such other acts as are herein provided for which generally benefits its Members, the Community, or the owners of any interests therein; and

WHEREAS, Grand Estates Community Association, Inc., a Kansas corporation not organized for profit, has been or will be incorporated under the laws of the State of Kansas for the purpose of exercising such powers and functions; and

WHEREAS, Developer and Thierer desire and intend that the Owners, Mortgagees, Mortgagors, Occupants, and all other Persons hereafter acquiring any interest in the Community shall at all times enjoy the benefits of, and shall hold their interest subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights herein set forth, all of which are declared to be in furtherance of a plan to promote and protect the Community.

NOW, THEREFORE, Developer for the purposes above set forth, declares that all real property within the Community shall hereafter be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which shall run with the land and be binding upon all real property within the Community and all parties having or acquiring any right, title, or interest in or to any real property within the Community, or any part thereof, and shall inure to the benefit of and be a burden upon each Owner and each Member of the Association.

Article I

Definitions

The terms used in this Declaration shall have the meanings as defined below:

1.01 "Assessments" shall include the following:

- A. "Regular Assessment" shall mean the amount which is to be paid by each Owner as such Owner's share of the Common Expenses of the Association.
- B. "Special Assessment" shall mean: (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Association for costs incurred in bringing the Owner or Owner's Lot into compliance with the provisions of the Master Declaration, this Declaration, the Design Standards, or the Association Rules; (ii) any other charge designated as a Special Assessment in the Master Declaration, this Declaration, the Association Rules, or Design Standards; and (iii) attorneys' fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of the Master Declaration or this Declaration.

- 1.02 "Association" shall mean Grand Estates Community Association, Inc., a Kansas not for profit corporation established for the primary purpose of enforcing the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein.
- 1.03 "Association Articles" shall mean the certain articles of incorporation filed with the Kansas Secretary of State and establishing the Association as a not for profit corporation under Kansas law.
- 1.04 "Association Board" or "Board" shall mean the Board of Directors of the Association.
- 1.05 "Association Bylaws" shall mean the bylaws governing the Association.
- 1.06 "Association President" shall mean the duly elected or appointed President of the Association.
- 1.07 "Association Rules" or "Rules" shall mean the rules and regulations, if any, adopted by the Association.
- 1.08 "City" shall mean the City of Manhattan, Kansas, a municipal corporation of the State of Kansas.
- 1.09 "Common Expenses" shall mean the costs incurred by the Association in conducting activities for which the Association is responsible pursuant to the terms hereof. Common Expenses shall include, but not be limited to, the following:
- A. the cost of maintenance, management, operating, repair, and replacement of all areas and facilities within the Community that are owned, maintained or operated by the Association (herein referred to as the "Common Areas"), specifically including, but not limited to, the certain real property in the Community whereon the certain "entrance" signs indicating the Community's presence are located;
 - B. unpaid Assessments;
 - C. the cost of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, superintendents, and attorneys;
 - D. the cost of utilities to Common Areas owned by the Association, specifically including, but not limited to, the certain real property owned, maintained and operated by the Association in the Community whereon the certain "entrance" signs indicating the Community's presence are located, landscaping maintenance, and snow removal for such Common Areas, and other services which generally benefit and enhance the value and desirability of the Community and which are provided by the Association;

- E. taxes of any nature owing by the Association and the cost of any insurance maintained by the Association;
 - F. reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Association;
 - G. the cost of bonding which may be required with respect to any person handling the funds of the Association;
 - H. costs incurred by the committees established by the Association, the Association Articles, the Association Bylaws, the Association Board or the Association President;
 - I. the common maintenance expense described as Association Maintenance Responsibilities, as defined in Article IX herein; and
 - J. the costs of any other item or items to be provided or performed by the Association pursuant to this Declaration or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.
- 1.10 "Community" shall mean Lots 1 through 12, Grand Estates Addition, an Addition in the City of Manhattan, Riley County, Kansas.
- 1.11 "County" shall mean Riley County, Kansas.
- 1.12 "Developer" shall mean Grand Mere Development, Inc., a Kansas corporation, its successors and assigns, or any person or entity to whom or which Developer's rights hereunder are assigned in writing.
- 1.13 "Declaration" shall mean this Declaration and any amendments thereto.
- 1.14 "Design Standards" shall mean the rules, regulations, restrictions, architectural standards, and construction guidelines herein designated as such and as otherwise which may from time to time be adopted by Developer or the Design Review Committee, as the case may be.
- 1.15 "Design Review Committee" or "DRC" means the committee provided for in Article VIII, Section 8.01 below.
- 1.16 "First Mortgage" means a Mortgage which is the first and most senior of all Mortgages upon the same property. "First Mortgagee" means the holder of a First Mortgage.
- 1.17 "Golf Course" means the Colbert Hills Golf Course and related facilities constructed on property including all buildings, vehicles, and equipment associated therewith, together with the clubhouse.

- 1.18 "Lot" shall mean a subdivided lot within the Community as shown on the applicable recorded Plat.
- 1.19 "Master Association" means the Grand Mere Property Residential District Master Association, a Kansas corporation not organized for profit, its successors and assigns, which shall be responsible for implementing the terms of the Master Declaration.
- 1.20 "Master Declaration" means that certain Declaration of Easements, Covenants, Conditions, and Restrictions for the Grand Mere Property Residential District Master Association and any amendments thereto or modification thereof.
- 1.21 "Member" of the Association shall mean any Person who or which is a record Owner of a fee or undivided fee interest in any Lot. If such Owner is or includes a Person other than an individual, an individual designated in writing must be designated by the Owner to be the Member representative. A Member of the Association shall not include any Owners who have sold their interest under executory contract. During such time as the contract is enforced, the contract vendee shall be considered to be the Member. When more than one Person holds an interest in a Lot, all such Persons shall be Members of the Association.
- 1.22 "Mortgage" means any recorded, filed, or otherwise perfected instrument given in good faith for valuable consideration (which is not a fraudulent conveyance under Kansas law) as security for the performance of an obligation, including, without limitation, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.
- 1.23 "Mortgagee" means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust. "Mortgagor" means the party granting the Mortgage.
- 1.24 "Native Grass" shall mean the natural prairie grass areas that are located within the Community, either on a Lot or Common Areas.
- 1.25 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant, or otherwise.
- 1.26 "Owner" shall mean the Person or Persons owning a Lot.
- 1.27 "Person" shall mean an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and his, her, or its respective heirs, representatives, successors, and assigns.
- 1.28 "Plat" shall mean the plat of the Lots comprising the Community as recorded in the Office of the Register of Deeds of Riley County, Kansas.
- 1.29 "Record" or "Recording" shall mean an instrument of record in, or the act of recording an instrument with, the Office of the Register of Deeds of Riley County, Kansas.

- 1.30 "Thierer" shall mean Thierer Construction, Inc., a Kansas corporation.

Article II

Declaration

In accordance with the provisions of the Master Declaration, Developer and Thierer hereby establish the Community and this Declaration to govern the design, maintenance, use, and occupancy of Lots and improvements within the Community. In the event of any conflict between this Declaration and any provision of the Master Declaration, the Master Declaration shall control unless the Master Declaration has a less restrictive provision that is in conflict with the Declaration provision, in which event the more restrictive provision shall control.

Article III

Scope

The covenants, conditions, restrictions, liens, assessments, easements, privileges, rights and other provisions contained herein shall encompass the Community as set forth in the Plat recorded with the Office of the Riley County Register of Deeds.

Article IV

The Association

- 4.01 **Formation of Association.** The Association has been, or will be, organized as a non-profit corporation for a perpetual term under the laws of the State of Kansas.
- 4.02 **Purpose of the Association.** The Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Community, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any), and other matters as provided in or contemplated by this Declaration, the Association Articles, the Association Bylaws, the Association Rules and/or the Design Standards. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by the Association for the benefit of the Community in accordance with this Declaration, the Association Articles and the Association Bylaws.
- 4.03 **Duties of the Association.** In addition to the duties delegated to the Association by the Association Articles and Association Bylaws, and without limiting the generality thereof, the Association shall have the following duties:
- A. **Insurance.** To obtain and maintain in force appropriate policies of insurance, which shall include without limitation, directors and officers liability coverage with a limit of not less than one million dollars (\$1,000,000) for claims for personal injury and/or property damage arising out of a single occurrence.

- B. Design Review Committee. To appoint and remove members of the Design Review Committee, subject to the provisions of this Declaration.
- C. Taxes and Assessments. To pay all taxes and assessments which are or could become a lien on any property of the Association.
- D. Budget. To create a budget for each accounting year of the Association, other than the Association's first accounting year. A budget shall be proposed and adopted by the Association Board on an annual basis in accordance with Article V, Section 5.02(B) below. Prior to the adoption of said budget: (1) all Members must receive notice that the Association Board is proposing said budget at least ten (10) days in advance; (2) a copy of the proposed budget must be available to any Member who requests it; and (3) Members must be given a reasonable opportunity to comment on the proposed budget before the Association Board adopts the budget.
- E. Easements. The Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Association such permits, licenses, easements, and rights of way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of all or any part of the Community or the preservation of the health, safety, convenience and welfare of the Owners.
- F. Records. To, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Member the books, records (including but not limited to minutes of meetings), and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Association Articles, Association Bylaws, Association Rules, and Design Standards. The Association shall retain copies of the following records for a period of five (5) years: (1) all receipts and expenditures; (2) minutes of all meetings except for executive sessions of the Association Board; (3) names of all Owners and/or Association Members, in alphabetical order, with addresses; (4) the Declaration, Association Bylaws and Association Rules; (5) names and addresses of current members of the Association Board; (6) the Association's most recent annual report, if any; (7) copies of current contracts to which the Association is a party; (8) records of architectural approvals, if any; and (9) ballots, proxies and other records relating to voting by Members for one (1) year after the election, action or vote to which they pertain. The Association must also retain copies of all financial statements and tax returns of the Association for a period of three (3) years. Notwithstanding the foregoing, neither Thierer nor the Developer shall be under any obligation to make its own books and records available for inspection by the Association, or any Owner, Member, or other Person.

- G. Association Rules. To adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate. However, prior to adopting, amending or repealing any Association Rules, the Association Board shall notify the Members of its intent and shall provide the text of the proposed Association Rule and the date on which the proposed Association Rule shall be considered. The Association Rules may not unreasonably or unlawfully discriminate among Owners and Members. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Member in the same manner established in this Declaration for the delivery of notice pursuant to Article XV, Section 15.02 below. Upon completion of the notice requirements, the Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Members, and all other Persons having any interest in, or making any use of, the Association, whether or not actually received thereby. After adopting, amending or repealing any Association Rule, the Association Board shall provide the Members with a copy of the text of the change. The Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Association to each Owner, Member, or other Person reasonably entitled thereto, upon request. In the event any conflict between any provision of the Association Rules and any provisions of this Declaration or the Association Articles or Association Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Association Articles or Association Bylaws to the extent of any such conflict.
- H. Enforcement. To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of the Declaration, the Association Articles, the Association Bylaws, the Association Rules and/or the Design Standards.
- I. Maintenance of Common Areas. To maintain and operate all areas and facilities within the Community that are owned by the Association, also known as the Common Areas, specifically including, but not limited to, the certain real property in the Community whereon the certain "entrance" signs indicating the Community's presence are located.

4.04 Association Membership, Meetings and Voting Rights.

- A. Each Owner shall be a Member of the Association, as set forth in Article I, Section 1.21 above. A membership in the Association shall be inseparable from the Lot to which it applies and may not be transferred separately from such Lot.
- B. The Members must meet at least annually at a time, date and place in accordance with the Association Bylaws. Special meetings of the Members may be held to address any matter affecting the Association if the Association President, a majority

of the Association Board, or at least ten percent (10%) (or less than ten percent (10%), if set forth in the Association Bylaws) of the Members call such a meeting. If a special meeting has not been set within thirty (30) days, the parties requesting the special meeting may directly notify all of the non-requesting Members of the meeting. Notifications for both annual and special meetings shall be made at least ten (10) days and no more than sixty (60) days beforehand, and shall include: (1) statement of the general nature of any proposed revisions to the Declaration or the Association Bylaws; (2) any Association budget proposals or changes; and (3) any proposal to remove a member of the Board or an officer of the Association. Owners shall be given an opportunity to comment on matters pertaining to the Association during such meetings.

- C. Subject to the provisions of Article IV, Section 4.12 below, each Lot shall be entitled to only one (1) vote in the Association, the number of Owners notwithstanding. The percentage of votes necessary for decisions and actions of the Association shall be set forth in the Association Bylaws. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercised as they among themselves determine and they shall designate and register with the secretary of the Association the name of that Person entitled to cast such vote, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot.

4.05 Board of Directors of the Association.

- A. The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Association Articles and Association Bylaws. Except for directors elected by Developer as provided for in Article IV, Section 4.12 below, each director shall be an Association Member.
- B. Any member of the Association Board may be removed from office, by action of the Members, in accordance with the following procedures: Upon the presentation to the Association President of a petition duly executed by thirty-four percent (34%) or more of all of the Members in favor of the removal from office of the member or members of the Board therein named, a special referendum meeting of the Members shall be promptly held to determine whether such member or members of the Board should be removed from office. Notice of such meeting shall be provided in accordance with the provisions set forth in Article XV, Section 15.02 below, except that the proposal to remove such member or members of the Board must be listed as an item in the notice of such meeting. At said meeting, upon the affirmative vote of two-thirds (2/3) of all of the Members then-entitled to vote to remove such member or members of the Board from office, such member or members of the Board shall be so removed. However, the member or members of the Board being considered for removal must have a reasonable opportunity to speak at said meeting prior to the vote of the Members. Any vacancy on the Board created by the removal of a member of the Board as herein provided shall be filled by an election of all of the Members in

the manner provided in the Association Articles or Association Bylaws for the election of directors.

- C. Meetings of the Board must take place at least twice per year during the period of the Developer's control as provided by Article IV, Section 4.12 below. One (1) such meeting must take place in the Community. Following the period of the Developer's control, the Board must meet at least annually. Each annual meeting must take place at the Association's principal office or at a location convenient for the Members. Meetings of the Association Board and its committees must be open to the Members except for executive sessions of the Association Board, which are limited to discussions involving: (1) consultation with the Association's attorney; (2) litigation or related alternative dispute resolution proceedings; (3) labor or personnel matters; (4) leases, commercial transactions or purchase if information released would compromise the Association's position; and (5) matters that would violate the privacy of any Person. The Board must meet at least annually, always at the Association's location or at a convenient place for Members. Unless the Board meeting is either an emergency or in a notice previously provided to all Members, the Board must notify the Members of a Board meeting at least five (5) days in advance of such meeting. Notice of a Board meeting shall include the time, date, place and agenda of such meeting. Copies of materials distributed to the Board except for unapproved minutes or materials for executive sessions shall be reasonably made available to Members.
- D. Notwithstanding the foregoing, the Association Board may not perform any of the following acts: (1) amend the Declaration, except as provided by law; (2) amend the Association Bylaws; (3) terminate the Association; (4) elect a member or members of the Association Board except to fill vacancies on such board until the next election of members to the Board; and (5) determine the Board's qualifications, powers, duties, or terms of office.

4.06 Duties and Powers of the Association President.

- A. To the extent not prohibited by law, or as otherwise herein expressly limited, the Association President shall be empowered to exercise control over the affairs of the Association and to act on behalf of, and bind, the Association in every instance wherein the Association is required or permitted to take any action.
- B. Notwithstanding anything in this Article IV, Section 4.06 to the contrary, the Association President shall not have the power to borrow any funds on behalf of the Association, make any expenditures on behalf of the Association which are, in the aggregate, more than five percent (5%) of the total amount of the Association's budget, or increase the amount of or levy any Assessment, without the prior approval of the Association Board.

- 4.07 President's Determination Binding. In the event of any dispute or disagreement between any Owners, Association Members, or any other Person subject to this Declaration, relating to the Community, or any question of interpretation or application of the provisions of this Declaration, the Association Articles, Association Bylaws, any Association Rules or other rules of the Association, or any Design Standards, the determination thereof by the President shall be final and binding on each and all of such Owners, Association Members, or Persons. The President may, at his or her election, delegate the resolution of such dispute or disagreement to the Board or a committee appointed by the Association President.
- 4.08 Association Management. The Association shall have the authority to employ a manager or management company to assist the Association with its duties. Any manager or management company employed by the Association shall have such authority as the Board may so delegate.
- 4.09 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, the members of the DRC, Developer (to the extent a claim may be brought against Developer by reason of its appointment, removal, or control over Board directors, officers, or DRC members), Thierer, and Legacy Realty of Kansas, LLC shall be indemnified by the Association, and every other person serving as an employee, or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement thereof to which such person may be a party, or in which such person may become involved, by reason of such person's being or having served in such capacity on behalf of the Association whether or not such person is a director, an officer, or a member of the DRC, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Board shall determine, in good faith, that such officer, director, member of the DRC or other Person, Developer, Thierer, and/or Legacy Realty of Kansas, LLC, did not act, fail to act, or refuse to act willfully, fraudulently, criminally or with gross negligence, in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled at law or otherwise.
- 4.10 Non-Liability of Officials. To the fullest extent permitted by law, neither Developer, Thierer, Legacy Realty of Kansas, LLC, the Association President, any directors or officers of the Association, any DRC member, nor any other Members or committees of the Association shall be liable to any Association Member or any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, or negligence, made in good faith and believed to be within the scope of his or her duties.

- 4.11 Mediation and Binding Arbitration. In the event of a dispute with the Association President's decision as elsewhere provided herein, between one (1) or more of the Owners, Members, the Association or any other Persons subject to this Declaration, relating to any question of interpretation, or application of the provisions, of this Declaration, or any Association Rules unless otherwise agreed by all parties to the dispute or disagreement, the parties shall submit the dispute or disagreement to a mutually acceptable mediator or, if there is no mutually acceptable mediator, then to a mediator selected by the Association Board. If such mediator is unable to mediate the dispute or disagreement to the satisfaction of the parties involved, the dispute shall be submitted to binding arbitration through the American Arbitration Association under its rules and procedures then in effect for disputes or disagreements of such nature or, in the absence of any such standard rules or procedures, then under such rules and procedures as it designates. The costs of such mediation or arbitration shall be assessed against the parties to such process. Notwithstanding and in addition to the foregoing, disputes between any of the parties set forth above shall mandatorily be submitted to non-binding alternative dispute resolution (in the form of mediation as set forth above or otherwise) as a pre-requisite to filing a lawsuit.
- 4.12 Developer's Control of the Association. Notwithstanding anything in this Article IV or elsewhere in this Declaration to the contrary, Developer shall maintain absolute and exclusive control over the Association and the DRC, including appointment and removal of the Association President and all other officers of the Association, all directors of the Board, and all members of the DRC, until the earlier of the following: (i) at such time as Developer chooses to turn over the operation of the Association, or some part of the operation of the Association, to Thierer and/or the Association; (ii) at such time ninety-five percent (95%) or more of the Lots in the Community (as the Community exists from time to time) have been sold by Developer to third parties; or (iii) twenty (20) years from the date of the execution of this Declaration. Until such time, only Developer will be entitled to cast any votes with respect to the election and removal of Association officers or directors and members of the DRC, or any other matter requiring the vote or approval of Association or DRC members. Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of Developer's control and rights by written instrument without affecting any rights of control not relinquished.

Article V

Assessments, Creation of Lien, and Personal Obligation

- 5.01 Assessments in General. Each Owner (excluding any and all Mortgagees as long as said Mortgages are not the Owner), by and at the time of acceptance of a deed or other conveyance of an interest in a Lot, is deemed to personally covenant and agree to pay the Association all Assessments then due and unpaid to the time of acquiring title and all such charges thereafter falling due under such Owner's ownership. Each Assessment, together with such interest and other costs shall be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for a delinquent payment of an Assessment

shall not pass to the successor assign of an Owner unless expressly assumed by him or her. If an Owner shall consist of more than one (1) Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several.

5.02 Regular Assessments.

- A. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be determined by the Association.
- B. The Association shall create a budget for the each fiscal year, approved by the Board, estimating the total Common Expenses to be incurred by such Association for such fiscal year. The budget shall also set forth the amount of the Regular Assessments to be paid by each Owner. Initial Regular Assessments shall be Three Hundred Dollars (\$300.00) per year per Lot, subject to increases or decreases as provided in this Article V, Section 5.02. The Regular Assessment is in addition to any and all assessments levied by the Master Association.
- C. If the Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, the Association President shall then immediately determine the approximate amount of such inadequacy and, with the approval of the Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of the Regular Assessment to be paid by each Owner for the balance of the year, and the date or dates due. Each Owner shall be notified of the additional amount required to be paid and the due date of such payment, and each Owner shall pay the additional amount when due. If the total Regular Assessments for a current year exceed the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year.

5.03 Special Assessments. Special Assessments shall be levied by the Association against an Owner to reimburse the Association for:

- A. Costs incurred in bringing an Owner or the Owner's Lot into compliance with the provisions of this Declaration, the Association Articles, Association Bylaws, or the Association Rules.
- B. Fines levied or fixed by the Association Board as provided herein.
- C. Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this Declaration, the Association Articles or Association Bylaws, or the Association Rules.

- D. Any other charge designated as a Special Assessment in this Declaration, the Association Articles, Association Bylaws, or the Association Rules.

The Association Board may propose and adopt a Special Assessment at any time, but all Members must receive notice of such Special Assessment at least ten (10) days in advance of such proposed adoption. A copy of the proposal for such Special Assessment must also be available to any Member who requests it. Members must be given a reasonable opportunity to comment on the Special Assessment before the Association Board takes action to adopt a Special Assessment.

- 5.04 Exempt Property. All properties owned by Thierer or Developer and all properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments provided herein.
- 5.05 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to an Owner upon the Owner's closing on a Lot, and shall be due on an annual basis, payable to the Association in advance.
- 5.06 Time and Manner of Payment; Late Charges and Interest. If an Assessment is not paid within thirty (30) days after its due date, each such Assessment shall have added to it a late charge equal to ten percent (10%) of the amount of Assessment and thereafter bear interest, until payment of such Assessment, at the rate of eighteen percent (18%) per annum or at such other rate as may be established from time to time by the Association. The Board may, in its discretion, waive any late charge and/or interest in any instance without prejudice to other instances. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency.
- 5.07 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason.
- 5.08 Reserves. The responsibility of the Board shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither Developer, Thierer, the Board, or any director thereof shall have any liability to the Association, any Owner, or Association Member, with regard to the adequacy of such reserves.
- 5.09 Lien for Delinquent Assessments. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as provided herein, shall be a continuing lien and encumbrance upon the Owner's Lot against which the Assessments are made as well as a personal obligation of the Lot's Owner.

- 5.10 Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Lot, each Owner shall be held to vest in the Association the right and power to prosecute all suits legal and equitable or otherwise that may be necessary or advisable for the collection of such Assessment(s). The Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and other expenses reasonably incurred in enforcing the rights hereunder.
- 5.11 Certificate of Non-Payment. Upon request any Person acquiring an interest in any Lot shall be entitled to a certificate from the Association setting forth the amount of due but unpaid Assessments relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur, or become due, after the date thereof and any interest, costs, attorneys' fees, and any late charges related to such unpaid Assessments.
- 5.12 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any assessment shall be subordinate to the lien of a prior recorded First Mortgage (together with any interest, cost, reasonable attorneys' fees, and any late charges thereto) on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments which accrued prior to the date the First Mortgage comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request by such First Mortgagee to the Association, such lien shall be released in writing by the Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner and may also be re-allocated by the Association among all Owners as a part of the Common Expenses.
- 5.13 Enforcement of Lien. Any lien provided for in this Declaration may be foreclosed by the Association in any manner provided, or permitted, for the foreclosure of real property mortgages or homes association liens in the State of Kansas. In the event the Association seeks to enforce any lien provided for in this Declaration, the Association shall record an Affidavit of Nonpayment of Regular or Special Assessment in the Office of the Register of Deeds of Riley County, Kansas, stating: (i) the legal description of the property upon which the lien is claimed; (ii) the name(s) of the Owner(s) of said property last known to the Association; and (iii) the amount of the Regular or Special Assessment which is unpaid. The Association may commence foreclosure proceedings within five (5) years of the date of recording of such an affidavit.
- 5.14 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated herewith,

the benefit of any redemption, homestead, or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

- 5.15 Pledge of Assessment Right as Security. The Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligation of the Association; provided, however, any such action shall require the prior affirmative vote, or written assent, of the Developer, if it controls the Association, or otherwise, a majority of all of the members of the Association. The Association's power to pledge its assessment powers shall include, but not be limited to, the ability to make an assignment of Assessments which are then payable to, or which will become payable to, the Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Association and used by the Association as required, unless and until the Association shall default on its obligations secured by said assignment.

Article VI

Insurance

- 6.01. Authority to Purchase. The Association shall purchase and maintain all required insurance upon the real property owned by the Association, if any. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Association. The Association shall make the same available to the Members in order to permit the Members to determine which particular items are included with the coverage on the Association. If they so desire, any Owners or Members may insure themselves as they see fit if any risks which they wish to have covered are not insured by the insurance purchased by the Association.
- 6.02. Member's Responsibility. It shall be each Owner's responsibility to purchase, at his or her own cost, such insurance as he or she deems appropriate for his or her own Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere, personal liability, and such other insurance which the Owner desires.
- 6.03 Non-Liability of Association/Board/President. Notwithstanding anything in this Declaration to the contrary, neither the Association nor any member of its Board nor any officer of the Association, nor Thierer, nor the Developer shall be liable to any Owner or Association Member, Mortgagee, or other Person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.
- 6.04 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy, or abandonment of a Lot, or its appurtenances, by an Owner, shall be assessed against that particular Owner in a Special Assessment.

- 6.05 **Insurance Claims.** The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Association has full and complete power to act for the Association in this regard and may, at his discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority to negotiate losses under any policy purchased by the Association.
- 6.06 **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association, or any insurance trustee, shall be held or disposed of in trust for the Association and the Owners, as their interests may appear.

Article VII

Maintenance, Repairs and Replacements

- 7.01 **Owner's Responsibility.** Except as may otherwise be provided for herein, each Owner, at such Owner's expense, shall furnish and be responsible for all of the maintenance, repairs, and replacements within such Owner's own Lot prior to, during, and after construction.
- 7.02 **Right of Access.** An authorized representative of the Association and all contractors, repairmen, or other agents employed or engaged by the Association, shall be entitled to reasonable access to each of the Lots as may be required to perform any of the Association's responsibilities hereunder.

Article VIII

Architectural and Landscape Control

- 8.01 **Design Review Committee.** The Association shall have a standing Design Review Committee ("DRC") consisting of not less than three (3) nor more than five (5) members as specified from time to time by Developer and/or Thierer during periods in which Developer and/or Thierer has the right to appoint the members of the DRC pursuant to Article IV, Section 4.12 above, and thereafter, by resolution of the Board, which shall also appoint members of the DRC. During the period of Developer's and/or Thierer's control as provided in said Section 4.12, the DRC shall act in an advisory capacity to Developer and/or Thierer, as the case may be. The DRC shall be empowered to utilize professional consultants as may be approved by Developer, Thierer and/or the Board, as the case may be. Notwithstanding anything in these Declarations to the contrary, in the event that Thierer gains control of the DRC either by itself or together with the Developer, Thierer shall remain in control of the DRC until the earlier of: (i) all of the Lots in the Community have homes built on such Lots;

or (2) Thierer relinquishes control to the Association in a written document able to be recorded with the Riley County Register of Deeds.

8.02 Establishment of Design and Construction Standards. In order to achieve uniformity and coordination within the Community, Design Standards therefore are hereby established as set forth in Section 8.08 of Article VIII. The Developer, Thierer and/or the Design Review Committee shall further implement and clarify the Design Standards through a separate Design Standards Booklet, which is incorporated into and made a part of this Declaration. This booklet shall be available for distribution to prospective Owners. The Construction Standards are hereby established as set forth in Section 8.09 of this Article VIII. The Master Association has approved this Declaration in all respects (including, without limitation, the Design Standards) as evidenced by the Developer's execution of this Declaration pursuant to Developer's rights under Section 3.20 of Article III of the Master Declaration. The Design Standards may from time to time be amended, repealed, or augmented by way of an amendment to this Declaration, which shall refer thereto and shall be placed of Record in Riley County, Kansas; provided, however, each of the foregoing shall be subject to the approval of the Master Association.

8.03 Review Process.

- A. Construction, placement of landscaping, or improvement on any Lot, including, but not limited to, site preparation, excavation, grading, walls, fences, or tree removal shall not commence until the proposed improvement plans for the dwelling house or other structure have been submitted and approved by Developer or the DRC, as the case may be. Review shall be coordinated with the required governmental approvals. Submission to the City and/or County for building permits or site plan approval shall not be made until final plans have been approved by Developer, Thierer or the DRC, as the case may be. All submissions to Developer, Thierer or the DRC shall be made within the time periods established by, and in a format approved by, either Thierer, Developer or the DRC, as the case may be. Generally, improvement plans will include, but are not limited to: (i) site plan including property lines, easements, and location of proposed dwelling house; (ii) floor plan(s) indicating wall lines and overall structure dimensions; (iii) elevation views of all four sides; (iv) roof and ground lines; (v) exterior building materials including, but not limited to, the colors of such materials; and (vi) landscape plan.
- B. Thierer, Developer or the DRC, as the case may be, shall act on the complete, proposed improvement plans submitted within thirty (30) working days after receipt, but not before five (5) working days after receipt. If Thierer, Developer or the DRC, as the case may be, does not take any action within the specified time period, the plan(s) shall be deemed approved. Approval of the plans by Thierer, Developer or the DRC, as the case may be, in no way abates or depletes compliance with or

procurement of any approvals, permits, licenses, codes, or ordinances which may be required by the City, County or the State of Kansas, now or in the future.

- C. Anyone having submitted plans for the DRC's approval may appeal the DRC's decision before the full Board, which, having granted such an appeal shall approve, overturn, or modify the DRC's decision. Procedures for such an appeal may be set forth in the Association Rules.
- D. Notwithstanding anything in this Declaration to the contrary, Developer and/or Thierer shall have sole discretion regarding deciding any architectural proposal submitted during the period that Developer and/or Thierer has voting control of the Association and the DRC.
- E. Plans submitted to the Design Review Committee for approval will be subject to a review fee as such a fee may be established by the Design Review Committee from time to time.

8.04 Interpretation and Waiver. The interests of Developer, Thierer and the DRC, as the case may be, in reviewing site and building designs are to assure that a high quality of compatible development is consistently achieved. In order to meet special situations that may not be foreseen, it may be desirable from time to time for Developer, Thierer or the DRC, as the case may be, to allow variances of certain requirements. Such variances shall not be considered precedent setting. All approvals and consents of Developer, Thierer or the DRC, as the case may be, shall be in writing, and oral approvals or consents shall be of no force or effect.

8.05 Thierer/Developer/DRC Authority.

- A. No dwelling house, fence, wall, or any other structure, or improvement of whatever type shall be commenced, erected or maintained within the Community, nor shall there be any addition or change to the exterior of any residence or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by Thierer, Developer or the DRC, as the case may be. Thierer, Developer or the DRC, as the case may be, shall use discretion and reasonable judgment in evaluating and approving all proposed plans. Thierer, Developer or the DRC, as the case may be, may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) low design quality; (iii) incompatible design elements; (iv) inappropriate design concepts or design treatment; and (v) a design found to have an adverse effect on the character of the Community or its residents. In recognition

of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment that cannot be completely described in Design Standards, Thierer, Developer or the DRC, as the case may be, shall also have the right to reject plans and specifications otherwise conforming to the Design Standards if Thierer, Developer or the DRC finds that the overall aesthetic or other impact of any proposed improvement, addition, alteration, or change is detrimental to the Community.

- B. Thierer, Developer or its representatives, any member or authorized consultant of the DRC, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ensure that such improvements have been, or are being, built in compliance with the plans and specifications approved by Thierer, DRC, the Design Standards, and this Declaration.
- C. The Association may promulgate such Rules as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the Design Standards set forth herein. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ASSOCIATION BOARD MAY FIX FINES FOR FAILURE TO OBTAIN APPROVAL FROM THE DRC OR TO COMPLY WITH ANY SUCH APPROVAL.**

- 8.06 Thierer, Developer/DRC Limits of Liability. By its approval of plans and specifications, Thierer, Developer or the DRC, as the case may be, shall not be deemed to have warranted or approved the same for engineering design safety, or for compliance with zoning, health and building ordinances; by approving such plans and specifications neither the DRC, the members thereof, the Association, any of its Members, its officers, its Board, nor Thierer, the Developer and/or their designated representatives assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the DRC, any member thereof, the Association, any of its Members, its officers, its Board, nor Thierer, the Developer and/or their designated representatives shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings, or specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii) the development, or manner of development, of any property within the Community. Anyone submitting plans to Thierer, Developer or the DRC, as the case may be, for approval and any other Owner agrees that he or she will not bring any action or suit to recover any damages against Thierer, Developer or its designated representatives, the DRC or any member thereof, or the Association, any of its Members, its officers, or its Board.
- 8.07 Authorized Builder. As part of the plan review and approval process, the DRC shall approve the choice of the Owner's general contractor. Such contractor shall be licensed by the City of

Manhattan and be of good character and reputation. An Owner shall not be allowed to act as his or her own general contractor, unless such Owner is actually a licensed contractor.

8.08 Design Standards. Notwithstanding anything in this Article VIII to the contrary, the Design Standards for Association must meet the following minimum criteria:

- A. Landscape Plan Review. Landscaping shall be reviewed for its general content, and its ability to handle runoff and prevent erosion. Landscape plans shall be submitted to the Design Review Committee at the same time building plans are submitted.
- B. Landscape Design and Installation. All Owners will be required to use the landscape design services of Thierer's designated landscape company for all landscape design as well as the installation of primary landscape. Primary landscape includes, but is not limited to, the installation of retaining walls, driveways, patios, private sidewalk location, in-ground sprinkler system, grass seeding and/or sodding, foundation planting and tree plantings.
- C. Landscape Construction. The following standards shall apply to landscape construction:
 - 1. *Erosion Control.* All Lots shall be maintained in a clean and orderly manner during construction periods. Erosion control shall be the responsibility of each Owner and in conformance with the stormwater permits issued by the City, County and/or the State of Kansas. Particular care shall be taken to protect the Golf Course.
 - 2. *Easements.* Within utility easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the maintenance of utilities, or which may change the direction of flow of drainage channels in the easements. The easement area of each Lot, except for those improvements for which a public authority or utility company is responsible, and the public right-of-way located adjacent to all curb lines shall be maintained by the respective Owners.
 - 3. *Utilities.* All utilities will be underground.
 - 4. *Fencing and Walls.* Fences are not encouraged because they fragment the landscape of the neighborhood. Property line fencing is discouraged, and no fencing will be allowed which has the effect of creating unmaintainable areas. All fencing and walls (including, without limitation, the composition and location thereof) shall be subject to the approval of the DRC. Only black metal fences with either stone, brick, stucco or black metal posts are permitted. Perimeter fences shall be a minimum of four (4) feet and a maximum of five (5) feet tall, painted metal, and open picket style only. One

(1) standard fence will be specified for use. No fence shall be constructed at any location that would be considered closer to the street than any part of the back corner of the house. Privacy screens of other materials may be permitted around patios so long as the DRC determines that the materials and design are in harmony with the house, but in no instance shall such screens penetrate the building setback lines. Without limiting the generality of the foregoing, no chain link, wire, PVC, wood panel or stockade fencing is permitted.

5. *Retaining Walls.* Retaining walls shall be made of materials approved by the DRC. Retaining walls may be stacked stone, poured concrete or concrete block with a veneer of stone or brick. Exposed concrete cannot exceed a height of twelve (12) inches above grade. Smooth gray concrete block walls are not permitted. Stacked, interlocking landscape wall systems are permitted if type is approved by the Design Review Committee.
6. *Decks, Arbors, Pools, Gazebos, and Other Outdoor Amenities.* All decks, arbors, pools, gazebos, and other outdoor amenities shall be approved by the DRC, and their design should be included in the plans submitted for the residence to be constructed on a Lot.
7. *Swimming Pools.* No above-ground-level swimming pool may be installed on any Lot.
8. *Mailbox and Light Post.* The location of each residential mailbox must be included as a part of the initial landscape plan submitted for approval. Each Owner will be required to install one (1) operable light fixture on top of their mailbox. The following specifications will be used as a guideline for the construction of all light posts and mail box posts:
 - (a) Post material type is to be brick, stone, or stucco;
 - (b) All mailbox units must be an approved type and color;
 - (c) One (1) operable light fixture with a photo cell must be installed on top of the mailbox;
 - (d) Size of Post:
Width of all four (4) sides: 24"
Height of post: 48" from top of curb plus 4" concrete cap
Height of mailbox: 36" from top curb
 - (e) Concrete Cap will be 24" x 24" x 4" white Portland concrete type selected by Thierer; and
 - (f) Street number plaque will be 12" x 6" and selected by Thierer.

- D. Landscape Lighting. All outdoor lighting shall be directed so as to avoid glare and excessive light spillage on adjacent property and fronting streets. Holiday lights may

be displayed from November 15 through January 30 and must be taken down by January 30.

E. Construction Period Requirements. During the period that a Lot and/or structure thereon are under construction, the following minimum measures shall be required to minimize disturbance to adjacent Lots:

1. No Lot is to be cleared or construction otherwise started without prior written approval of the plans for that Lot by the DRC.
2. Contractors will assume complete responsibility for the actions of their workers as well as those of their sub-contractors.
3. All trash, debris, and/or refuse produced by construction on a Lot shall be contained on such Lot.

F. Residence Design.

1. The design of each residence shall be submitted to the Design Review Committee for approval prior to the commencement of construction.
2. No turbines or solar panels shall be permitted which can be seen from any street or the Golf Course.
3. No extremely contemporary home designs shall be allowed.

G. HVAC. No window or wall air conditioning or heating units shall be permitted.

H. Swimming Pools and Tennis Courts. All pool areas, equipment associated therewith, and screening shall be approved by the applicable DRC. No tennis courts shall be allowed.

The DRC may impose criteria that are more restrictive than the criteria set forth above, but in no event shall the DRC allow for Design Standards which fail to meet the above-described minimum criteria.

8.09 Construction Standards.

A. The following minimum finished square footage requirements have been established for the Community. There are no maximums; however no house built on a Lot will be permitted to overwhelm its Lot.

Grand Estates

All Lots

- Ranch, one story above grade 2,100 sq. ft.
- Multiple stories above grade 2,800 sq. ft. above grade with a minimum of 1,600 sq. ft. on the main floor

- B. Roofs. Roofs shall be cedar shake or cedar shingles, slate, tile, concrete tile, or architectural grade asphalt shingles rated at forty (40) years or more. Alternative roof materials may be approved by the DRC, in the DRC's sole discretion, based on such materials' compatibility with the architectural style of the home on a particular Lot.
- C. Colors and Materials. Colors, textures, and architectural details should be in harmony with the surroundings of Grand Mere. No extremely contemporary, overly bold, or potentially offensive colors, patterns, or textures will be acceptable. All exterior colors are subject to review and approval by the DRC.
- D. Garages. Garages are to be given the same architectural treatment and constructed of the same materials as the main structure. Garages shall be side entry unless the DRC determines the site will not accommodate it. All garages must be two (2) car width or larger. If there are only two (2) stalls, each must have a separate door (9' x 7' or 9' x 8'). If there are three (3) stalls, a double door (16' x 7' or 16' x 8') and a single door (9' x 7' or 9' x 8') will be allowed. All garages shall be constructed as part of, or attached to, a house on a Lot by an enclosed walkway.
- E. Siding. Buildings will be faced on all sides with quality facing materials such as brick, stone, wood, masonite, concrete fiber lap siding, or stucco. Cultured stone by Owens Corning may be used, but any other manufactured stone must be approved by the DRC. The following materials are not allowed: exposed standard concrete block; bare concrete except to a maximum of 12 inches above grade; and prefabricated metal buildings. All materials on the exterior of a house should terminate at inside corners, and not stop on-edge at outside corners.
- F. Shutters. If shutters are used, they shall be the same size or larger than the window and either be functional or appear functional.
- G. Outbuildings Prohibited. Other than landscaping features, no building or other detached structure may be erected on any Lot without the consent of the DRC.

8.10 Construction Limitations.

- A. Unfinished Work. Once commenced, construction shall be diligently pursued to the end, and it shall not be left in a partially finished condition for more than thirty (30) days.

- B. Destroyed Homes. Homes destroyed by fire or natural disaster shall be demolished and/or removed from the premises within three (3) months and new construction started expeditiously, weather permitting. The same standards and procedures shall apply as for new construction. Partially burned or damaged property shall follow the same rules and standards.

- 8.11 Public Approvals. All pertinent requirements of public agencies shall be followed in the development of the Lot, and all plans must be approved by the appropriate departments of the City. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive in land use, site development standards, landscape requirements, or in other matters. In every case in which the Design Standards or approvals given by the DRC are at variance with the public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of the Lot will be made by the City.

Article IX

Covenants, Conditions and Restrictions for Maintenance

- 9.01 Lot and Dwelling Site Maintenance. Except with respect to Common Areas, care and maintenance to be performed by the Association, each Owner shall keep the Lot owned by such Owner and all improvements thereon in good order, condition, and repair, including, but not limited to, the maintenance, repair, and replacement of all structures, buildings, and other improvements; roofs, gutters, down spouts, exterior building surfaces, and other exterior improvements; any enclosed courtyards, decks, and the interior of the residence, including all appliances, heating and air conditioning equipment, and plumbing; exterior doors, windows, glass walks, chimney flues and structural items, patios, porches, steps, lawns, driveways and sidewalks appurtenant to such Lot, all in a manner and with such frequency as is consistent with good property management. Each Owner shall be responsible for routine sweeping and leaf removal from driveways, sidewalks, decks, and patios which are appurtenant to his or her home. Each Owner shall be responsible for all weed control or crabgrass removal. Each Owner shall be responsible for treating driveways and sidewalks upon each Lot to ensure such areas are kept free from ice buildup. Each Owner shall be required to pay for monthly trash and refuse pick-up, notwithstanding the Association's ability to determine the private contractor to be utilized by all Owners in accordance with Article X, Section 10.09 below. Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's Lot.
- 9.02 Association Maintenance and Services. The Association shall be responsible for certain maintenance. All maintenance not described in this Article IX, Section 9.02 as specifically an Association Maintenance Responsibility shall remain a responsibility of an individual Lot Owner. Association Maintenance Responsibility includes the following:

- A. Native Grass Maintenance. The Association shall be responsible for the maintenance of the Native Grass within the Common Areas of the Community. This includes the picking up of trash and/or debris that may accumulate in and upon such Native Grass.
- B. Easements.
1. Utility Easements. Developer will install, or cause to be installed, lines, pipes, conduits, members and other utility facilities referred to as "utility lines" for the purpose of providing such sewer, electricity, gas, water and telephone services to the individual Lots. To ensure that such utility lines shall be kept, maintained, restored, repaired and replaced, Developer hereby grants to the Association, its successors and assigns, and to the City and to any and all public utilities, for the benefit of the Owners, the following permanent rights, licenses and easements:
 - a. An easement to keep, maintain, restore, repair and replace any such utility lines over, under and across the Community or the Lots for the purpose of maintaining, restoring, repairing or replacing any utility lines, and for the purpose of reading any meter installed with respect to any utility line.
 - b. If, in order to maintain, restore, repair or replace the utility line that serves any one Lot, it becomes necessary to break through walls, excavate or otherwise damage a Lot or the Community the damages caused by such action shall be repaired and the Lot or the Community so damaged shall be restored to substantially the same condition as prior to such damage, as a Common Expense of the Association, payable out of the Regular Assessment; unless, however, the need for such maintenance, restoration, repair or replacement was caused through the willful or negligent act of an Owner, the Owner's family, guest or invitees, in which event the cost of such maintenance or repairs shall be added and become an additional Assessment to such Owner. Expenses applicable to removal of obstructions in a sewer line from the connection with a main by a private line to a Lot, however, shall be assumed and paid by the Owner of such Lot and shall not be a common expense payable by the Association out of the Regular Assessment.
 - c. If it becomes necessary to maintain, restore, repair or replace utility lines which serve more than one Lot, then the cost of such maintenance, restoration, repair or replacement to its former condition

shall be a common expense payable by the Association out of the Regular Assessment.

2. Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the Lots for ingress and egress, installation, operation, replacing, repairing and maintaining utilities, including but not limited to, water, sewer, telephone, television, high speed internet cables, electricity, gas, for drainage facilities and floodway purposes, together with the right to remove any obstruction that may be placed in such easement area that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utilities, drainage and floodway courses.
 3. Easement for Ingress and Egress. Developer hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, for the benefit of each Owner, an easement for ingress and egress to each Lot over and across each Lot.
 4. Association Easement. Developer hereby establishes and reserves to itself, its successors and assigns, and the Association, an easement over, under and across, the Community for the benefit of each Lot Owner, for the purposes of executing any of the powers, rights or terms of this Declaration, the Association Articles, or the Association Bylaws.
- 9.03 Enforcement. If, in the opinion of Developer or the Association, as the case may be, any Owner fails to perform such duties or otherwise breaches such Owner's obligations, Developer or the Association, after fifteen (15) days' written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available at law or at equity) but not a duty, through its agents and employees to enter upon the Lot(s) involved and to repair, maintain, repaint, remove, and restore such Lot(s) or such improvements or otherwise bring such Lot(s) or such improvement into conformity herewith and the cost thereof shall be a personal obligation of such Owner and a Special Assessment, which may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question, shall be levied against such Lot(s).

Article X

Covenants, Conditions and Restrictions for Use and Occupancy

- 10.01 General. The use of a Lot which violates any laws or regulations of the City, the County or the State of Kansas shall not be permitted.
- 10.02 Master Declaration Covenants, Conditions and Restrictions. The Master Declaration's Covenants, Conditions and Restrictions are hereby fully incorporated into this Declaration

and shall be deemed to be in full force and effect as if they were set forth in full herein. In the event of an inconsistency between this Declaration and the Master Declaration, the more restrictive covenants, conditions and restrictions for use and occupancy shall apply.

10.03 Residential Use. Each Lot within the Residential District may be used for only residential purposes and no other, except that home occupations, as defined in this Article X shall be permitted. The following are intended to be examples of home occupations that are permitted:

- A. Dressmakers, seamstresses, tailors.
- B. Music teachers, dance or art instructors, provided that instructions shall be limited to one (1) pupil at a time, except for occasional groups.
- C. Artists, sculptors and authors or composers.
- D. Ministers, rabbis, priests.
- E. Home crafts, such as model making, rug weaving, cabinet making, etc.

No home occupation shall be permitted unless it complies with the following restrictions:

- A. No stock in trade shall be displayed, rented, sold, or stored on the premises, except for tangible personal property produced by persons residing on the premises.
- B. No alteration of the principal residential building shall be made which changes the character thereof as a dwelling.
- C. No more than twenty-five percent (25%) of the dwelling unit shall be devoted to a home occupation. In addition, the total area of the premises devoted to the home occupation shall not exceed fifty percent (50%) of the total living area of the dwelling unit.
- D. There shall be no outdoor storage of equipment or materials used in the home occupation.
- E. No person shall be employed by the home occupation, unless they reside within the dwelling unit.
- F. The home occupation shall be conducted entirely within the principal residential building or in a permitted structure accessory thereto.
- G. No sign for the home occupation shall be permitted.

- H. There shall be no noise, smoke, dust, odor, or vibrations emanating from the Lot which unreasonably annoys, disturbs, injures or endangers the comfort, repose, health, peace, or safety of persons off of said Lot.

In the event of a question regarding whether a proposed or existing home occupation complies with this Article X, the decision of the DRC shall control. No business or commercial building may be erected on any Lot and no business or commercial enterprise, or other non-residential use, may be conducted on any part thereof. No temporary buildings, structures, or trailers may be erected, placed, or maintained on any Lot, except as expressly permitted by, and in compliance with, the applicable Design Standards. Nothing herein contained shall be deemed to limit the Developer's rights as set forth in Article XIV below.

- 10.04 Signs. No permanent sign of any kind shall be displayed to the public view, or from any Lot, or any Common Areas, without approval of the Master Association, the Association, or the DRC, except for the following temporary signs ("Permitted Signs"): (a) such signs as may be used by Developer and/or Thierer in connection with the development and sale of Lots in the Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law, including, but not limited to, political signs covered by K.S.A. 58-3820; (c) such signs as may be required for traffic control, regulation of Common Areas and/or as may otherwise be required by the City and/or County; (d) such signs advertising the Lot as being for sale, except that: (i) the sign must be located only on the Lot to be sold; and (ii) no real estate signs shall be placed in any Common Area; and (iii) only one (1) real estate for sale sign shall be placed on each Lot; (e) signs promoting political candidates, but only forty-five (45) days before and two (2) days after the day of election, and only located upon the Lot of the Owner; and (f) builder signs, one (1) per Lot. Permitted signs shall not exceed six (6) square feet in total area. Nothing contained herein shall be deemed to limit the Developer's and/or Thierer's rights as set forth in Article XIV below. The Developer, Thierer or the Association shall have the right to remove any sign that violates these sign conditions. None of the restrictions contained in this Article X, Section 10.04 shall be deemed to apply to the certain "entrance" signs owned by the Association that indicate the presence of the Community.
- 10.05 Animals. No animals, including horses or other domestic farm animals, fowl, or poisonous reptiles of any kind may be kept, bred, or maintained on any Lot, except a reasonable number of commonly accepted household pets in accordance with the Association Rules. No animals shall be kept, bred, or raised within the Community for commercial purposes. In no event shall any domestic pet be allowed to run free away from its Owner's Lot or so as to create a nuisance.
- 10.06 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his or her Lot, or on or about any portion of the Community which will obstruct or interfere with the rights of other Owners, Occupants, or Persons, or annoy them by unreasonable noises, or

otherwise, nor will he or she commit, or permit any nuisance, or commit, or suffer any illegal act to be committed therein. Each Owner shall comply with the Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Community.

- 10.07 Boats and Motor Vehicles. No boats, trailers, buses, motor homes, campers, or other recreational vehicles shall be parked or stored in, or upon the Lot except within an enclosed garage. No vehicle shall be repaired (excepting minor repairs) or rebuilt on any Lot. The Association may remove, or cause to be removed, any unauthorized vehicle or other item prohibited hereby at the expense of the owner thereof in any manner consistent with law.
- 10.08 Antennas. Other than one (1) 18" to 24" satellite dish per Lot, no external radio, television, or other antennas of any kind or nature (including, but not limited to, "satellite dishes") or other devices for the reception or transmission of radio, microwave, or other similar signals, shall be placed or maintained upon any Lot without the prior approval of the DRC. The location of a compliant satellite dish must be approved by the DRC prior to the installation of such satellite dish on a Lot and such satellite dish shall not be located on the roof of any building on a Lot.
- 10.09 Garbage. No garbage or trash shall be kept, maintained, or contained in any Lot so as to be visible from another Lot. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated, or suffered to remain anywhere on a Lot. The Developer, Thierer, and/or the Association will select one (1) trash removal service and all Owners will be required to contract their trash removal with this service. Trash shall be placed in such designated locations and containers as may be established from time to time by the Association.
- 10.10 Mining. No portion of the Community shall be used in any manner to explore for or remove any water, oil, or other hydrocarbons, or minerals of any kind, or earth substance of any kind.
- 10.11 Safe Condition. Without limiting any other provision of this Article X, each Owner shall maintain and keep his or her Lot at all times in a safe, sound, and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots. All improvements on a Lot which are damaged by or destroyed by fire or other casualty shall be repaired and restored by the Owner thereof with due diligence.
- 10.12 Basketball Goals. No basketball goals shall be attached to any building on a Lot. All basketball goals shall be free standing and when located on a Lot having a side entry garage shall be located behind the front building set back line shown on the applicable plat. When located on a Lot having a front entry garage, the goal may be within the front setback but back as far as practical. The location of all basketball goals on a Lot is subject to the approval of the Design Review Committee.

- 10.13 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot.
- 10.14 Parking. Parking shall be accommodated on site with no parking allowed on public streets. Exceptions will be made for on-street parking that is necessary to accommodate guests. In such an instance, the on-street parking may not exceed twenty-four (24) hours.
- 10.15 No Further Subdivision; Compounds. No Lot shall be divided or subdivided except by the Developer. If an Owner owns contiguous Lots, they may be combined into a single home site, but only upon obtaining the prior written approval of the DRC (each such approved combination of Lots being called a "Combined Lot"); provided, however, (i) all Assessments in respect of a Combined Lot shall constitute a lien, as provided in Article V, upon the entire Combined Lot held by the Owner; and (ii) the Owner of each Combined Lot shall be entitled to the rights of only one Association Membership in respect of all such Lots so combined. In addition, once two (2) or more Lots have been so combined to form a Combined Lot, they shall remain as such, and the Owner(s) thereof shall not be permitted at any time to rent, sell, or otherwise transfer or convey less than all of such Combined Lot.
- 10.16 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit, or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on the Plat, or other binding document, as a "drainage easement," or which has intentionally contoured to facilitate drainage, except that, with the prior consent of the City and the DRC, nonpermanent structures, including fences, may be erected on those areas which contain only underground closed conduit storm drainage facilities.
- 10.17 Storage Tanks. No exterior storage tank(s) for fuel or anything else shall be allowed on any Lot.
- 10.18 Garage Doors. Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item from the garage.
- 10.19 Rental of Lots. An Owner who leases his or her Lot to any Person shall be responsible for assuring compliance by his lessee with all of the provisions of this Declaration, the Design Standards, and the Association Articles and Bylaws, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations by his or her lessee thereof.

No Lot shall be rented for transient purposes or without the prior written approval of the Association Board, for any period of less than three (3) months, to more than two (2) unrelated persons, or more than one (1) family or in any manner that does not comply with

the City's code and regulations. No Owner shall be entitled to rent his or her Lot if he or she is delinquent in the payment of any assessment required by this Declaration or the Master Declaration. Any lease or rental agreement pertaining to a Lot shall be approved by the Association Board prior to any lessee or tenant taking occupancy thereunder. The Association Board may require standardized leases or rental agreements with respect to all Lots; provided, however, that the amount of rent shall not be subject to approval or standardization by the Association Board. All leases or rental agreement shall contain a provision to the effect that the rights of the tenant to use and occupy the property shall be subject to and subordinate of in all respect to the provisions of this Declaration, the Master Declaration, Association Bylaws and any institutional Mortgagee of any property who obtains possession of a property as a result of any remedies provided by law or in such mortgage, as a result of a foreclosure sale or other judicial sale, or as a result of any proceedings, arrangements, or deed in lieu of foreclosure.

10.20 Flagpoles. Freestanding flagpoles are prohibited.

10.21 Native Grass. Any and all Native Grass that shall be present upon any Lot shall not be disturbed or altered from such Native Grass' natural state, except as necessary to build a residence upon a Lot, and any approved landscaping, driveways, and any outbuildings thereon. Notwithstanding the foregoing, Owners are permitted and encouraged to remove trash, debris and clutter from the Native Grass on a regular basis to enhance the aesthetic appeal of the Community. In addition, Owners are permitted and encouraged to develop and carry out a maintenance plan for the Native Grass. Such plan may include appropriately timed, periodic mowing, and selective chemical treatment of undesirable vegetation that encroaches into the Native Grass. Prescribed, controlled burning is acceptable, but only with the necessary permits from governmental authorities. Any such burning shall be done in cooperation with the Golf Course, neighbors in the Association, and property owners adjacent to those in the Association.

10.22 Lawn Ornamentation. No lawn ornaments of any kind are permitted in yards visible from any street or the Golf Course without approval of the DRC. There shall be no painting of curbs, steps, the public street, or other site amenities with logos, address numbers, advertising messages or slogans without the approval of the DRC.

10.23 Subsequent Modifications. Even after the structure has been completed and occupied, the approval of the Design Review Committee is required prior to undertaking any changes or additional construction affecting the exterior of the home. This would include adding or changing decks, pools, gazebos, outside lighting, cabanas, driveways, walks, fences, retaining walls, basketball goals, landscaping, etc. It would also include any grading changes that affect drainage. Review of such modifications may be subject to any applicable fees charged by the Design Review Committee.

- 10.24 Enforcement. The Association or its authorized agents may enter any Lot on which a violation of these restrictions exists and may correct such violations at the expense of the Owner of such Lot. Such expenses and such fines may be imposed pursuant to this Declaration or the Association Rules shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article V hereof. All remedies described in Article XI hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant, or other Person of any provision of this Article X.

Article XI

Remedies

- 11.01 General Remedies. If any Person(s) within the Community shall violate, attempt to violate or default upon any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions contained herein or in the Master Declaration, it shall be lawful for Developer, any Owner, the Association, the Master Association, and/or any other Person owning any of the aforesaid Lots, to prosecute, together or separately, any proceeding at law or in equity against the Person(s) violating or attempting to violate such covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions for the purpose to either prevent such Person(s) from doing so or to recover damages for such violation(s). Any Person authorized under this Article XI, Section 11.01 may prosecute such violations or attempted violations for injunctive relief, for enforcement or foreclosure of any lien herein provided, for damages, for specific performance, for judgment for payment of money and collection thereof, or for any combination of remedies.
- 11.02 Association Remedies. In addition to the remedies available in Article XI, Section 11.01 above and set forth in the Master Declaration, if any Person(s) within the Community shall violate or attempt to violate any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions contained herein, it shall be lawful for Developer, the Association or the Master Association as the case may be, within reason, to suspend Association and/or Master Association services and privileges with respect to such Person(s) and/or to impose fines against such Person(s). Any fines so imposed shall be a personal obligation of and shall be charged to and assessed against such Person(s) violating or attempting to violate the provisions of this Declaration and/or the Master Declaration as a Special Assessment and shall be subject to Article V above.
- 11.03 Legal Action. In addition to any other remedies available under this Article X, but subject to the alternative dispute resolution provisions provided in Article IV, Section 4.11 above, if any Owner (either by Owner's conduct or by the conduct of any Occupant of such Owner's Lot or family member, guest, invitee, or agent of such Owner) shall violate any of the provisions of this Declaration, the Master Declaration or any other document contemplated hereby, as then in effect, then the Association, the Master Association, the Developer, or any affected or aggrieved Owner, shall have the power to file an action against the defaulting

Owner for a judgment, or injunction against the Owner or such other Person requiring the defaulting Owner or any other Person to comply with the provisions of this Declaration, or any other document contemplated hereby, and granting other appropriate relief, including money damages. Further, in the event of judicial proceedings concerning the Association unrelated to enforcement of the Declaration, the Association Articles, Association Bylaws or Association Rules, the Association shall promptly provide notice to the Members of such proceedings.

- 11.04 Expenses of Enforcement. Any Person authorized under this Article XI to prosecute violations or attempted violations shall have the right to include in such Person's claim for relief a reasonable sum to reimburse such Person for the court costs, attorneys' fees, and other expenses reasonably incurred in enforcing the rights hereunder. All expenses of Developer, the Master Association or the Association incurred by exercising the enforcement rights of this Article XI, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest therein until paid at the judgment rate of interest, shall be charged to and assessed against such Owner or other Person in violation of or attempting to violate the provisions of this Declaration, and shall be a Special Assessment against such Owner or other Person, and the Association and/or the Master Association shall have a lien as provided in this Declaration. Failure by any Person authorized under this Article XI, Section 11.04 to enforce any covenant, condition, restriction, lien, assessment, privilege, right, or other provision herein shall in no event be deemed a waiver of the right to do so thereafter.
- 11.05 Limitation of Remedies. Notwithstanding the provisions of this Article XI, the Master Association and the Association, by and through the Association Board or otherwise, shall not have the power to: (1) deny any Owner access to his or her Lot; (2) suspend any Owner's right to vote for Association purposes, except on financial issues; and (3) withhold services from any Owner that would endanger such Owner's health and/or safety.

Article XII

Term and Amendment

- 12.01 Covenants Running with the Land. The covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions of this Declaration shall run with the land and shall be binding upon all parties hereto and on all Persons claiming under them until the year 2070, after which time the said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by three-fourths (3/4) of the Owners of the Lots has been recorded agreeing to change said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions of this Declaration in the whole or in part, it being understood that an Owner, with the exception of Developer, shall be entitled to cast as many votes as he or she may own Lots in said Community.

- 12.02 Amendment by Developer. Amendments to this Declaration made prior to the date that Developer turns over operation to the Association shall become effective when approved in writing by Developer and recorded in the Office of the Register of Deeds of Riley County, Kansas; provided, however, that such amendment shall not materially affect the right of any then-existing mortgage holder or Owner. Developer reserves the right to correct errors that would prevent the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein from running with the land, and any such amendments shall not be construed as materially affecting the right of any then-existing mortgage holder or Owner.
- 12.03 Amendments. Amendments to this Declaration, other than those made in accordance with Article XII, Section 12.02 above shall be proposed in the following manner:
- A. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.
 - B. A resolution adopting a proposed amendment may be proposed by any Owner and may be adopted by a majority vote of the Members of the Association.
 - C. A copy of each amendment shall be filed of record with the Office of the Register of Deeds of Riley County, Kansas.

Article XIII

Rights of First Mortgagees

- 13.01 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Design Standards or Association Articles, Bylaws, or Rules, the provisions of this Article shall apply to and benefit each holder of a First Mortgage upon a Lot.
- 13.02 Liability for Assessments. A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of its Mortgage, or through any equivalent proceedings, such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or any third-party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges, or assessments under this Declaration which may accrue prior to the time such First Mortgagee or third-party purchaser comes into possession of such Lot, or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any such dues, charges, or assessments accrued prior to the earlier of the time such First Mortgagee or third-party purchaser came into possession of such Lot or became record Owner of the Lot. Any such unpaid dues, charges, or assessments against the Lot foreclosed shall be deemed to be a Common Expense.

Nevertheless, in the event the Owner against whom the original assessment was made is the purchaser of or redeems the Lot, the lien shall continue in effect and may be enforced for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Association Board may use reasonable efforts to collect the same from said Owner even after he or she is no longer a member of the Association or the Owner of the Lot.

- 13.03 Enforcement after Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.
- 13.04 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), or from the time a trustee under a first deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to, the right to vote as a Member of the Association in the place and stead of the defaulting Owner.
- 13.05 Subject to Declaration. At such time as the First Mortgagee shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligations to pay all assessments and charges accruing thereafter, in the same manner as any other Owner.

Article XIV

Exemption of Developer and Thierer from Restrictions

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Developer and/or Thierer, their employees, agents and subcontractors, or parties designated by them in connection with the construction, completion, sale, or leasing of the Lots, or any part of the property owned by Developer and/or Thierer.

Article XV

General Provisions

- 15.01 Severability. The invalidation, by judgment of court order, of any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions

contained herein, shall in no way affect any other provisions, which shall remain in full force and effect.

- 15.02 Notice. Notices provided for in this Declaration, the Association Bylaws, or the Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Association Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Members at such time. All notices to Members shall be to the last mailing address and/or electronic mail address of a Member designated by such Member and shown on the records of the Association. In the absence of such a designation by a Member, notice may be given by hand delivery, U.S. Mail or commercial delivery service, electronically, or any other method reasonably calculated to provide notice to such Member. Any Member may designate a different address or addresses for notice to it by giving written notice of its change of address to the Association. Notices addressed as set forth above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment thereof. In the interest of establishing a reasonable method of communication between the Association and the Members, or between Members, the Association shall provide the designated mailing address and/or electronic mail address of all Members to any Member who shall request such information.
- 15.03 Captions and Exhibits; Construction. Captions are given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community as hereinabove set forth.
- 15.04 Rule Against Perpetuities. If any of the options, easements, privileges, covenants or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of Larry E. Thierer.
- 15.05. Board of Directors May Act for Owners. Whenever in this Declaration or the Association Bylaws, the Association Board or the members thereof are authorized or directed to acquire, hold, lease, mortgage, or convey any part of or interest in the properties, or to acquire any lien thereon, or to acquire or receive the proceeds to any policy of insurance or other monies, goods, or chattels, with respect to the properties, such action shall be carried out in the names of the members of the Board and their successors in office from time to time, as trustees, on behalf of some or all of the Owners, as the case may be.
- 15.06. Electric, Gas, Sewer, and Water Services. Electric, gas, water, and sewer services shall be supplied by the public utility companies serving the area directly to each Lot through a separate meter, and each Owner shall be required to pay the bills for electricity, gas, water,

and sewer services consumed, used, or provided in or to his Lot. Electricity, gas, water, and sewers serving all of the Lots shall be separately metered and shall be a Common Expense.

- 15.07 Construction. Whenever the context so permits, the use of plural shall include the singular, the singular plural, and the use of any gender shall be deemed to include all genders.

Article XVI **Rights and Obligations**

Each grantee of the Developer or of any Owner, by the acceptance of a deed of conveyance and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each person acquiring a membership in the Master Association or the Association, and the heirs, successors, and assigns of the foregoing, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, and reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of any such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract, or instrument evidencing or creating such interest.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow.]

Signature Page**Grand Mere Development, Inc.****Declaration of Easements, Covenants, Conditions and Restrictions for Grand Estates Community**

IN WITNESS WHEREOF, Developer has executed this Declaration this 12th day of November, 2015.

GRAND MERE DEVELOPMENT, INC.,
a Kansas corporation

By: Mary L. Vanier
Mary L. Vanier, President

DEVELOPER**ACKNOWLEDGMENT**

STATE OF Kansas, COUNTY OF Riley, SS:

BE IT REMEMBERED on this 12 day of November, 2015, before me the undersigned, a notary public in and for the county and state aforesaid, came Mary L. Vanier, President of Grand Mere Development, Inc., a Kansas corporation, said person being known to me to be the same person who executed the above instrument and acknowledged the same to be her voluntary act and deed for and on behalf of said corporation, as Developer.

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

Lesli J. Hanson
Notary Public

My appointment expires: 8-18-2018



Signature Page**Thierer Construction, Inc.****Declaration of Easements, Covenants, Conditions and Restrictions for Grand Estates Community**

IN WITNESS WHEREOF, Larry E. Thierer has executed this Declaration this 15th day of November, 2015.

THIERER CONSTRUCTION, INC.,
a Kansas corporation

By: 
Larry E. Thierer, President

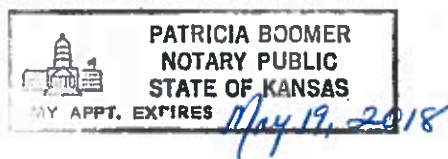
THIERER

ACKNOWLEDGMENT

STATE OF KANSAS, COUNTY OF RILEY, SS:

BE IT REMEMBERED on this 15th day of November, 2015, before me the undersigned, a notary public in and for the county and state aforesaid, came Larry E. Thierer, President of Thierer Construction, Inc., a Kansas corporation, said person being known to me to be the same person who executed the above instrument and acknowledged the same to be his voluntary act and deed for and on behalf of said corporation, as Thierer.

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




Notary Public

My appointment expires:

Signature Page**Approval of the Master Association****Declaration of Easements, Covenants, Conditions and Restrictions for Grand Estates Community**

IN WITNESS WHEREOF, the foregoing Declaration of Easements, Covenants, Conditions and Restrictions are hereby approved by the Master Association in accordance with Article II of the Master Declaration on this 27th day of October, 2015.

**GRAND MERE PROPERTY
RESIDENTIAL DISTRICT MASTER
ASSOCIATION**, a Kansas corporation not
organized for profit

By: Mary L. Vanier
Mary L. Vanier, President

MASTER ASSOCIATION

ACKNOWLEDGMENT

STATE OF Kansas, COUNTY OF Riley, SS:

BE IT REMEMBERED on this 27th day of October, 2015, before me the undersigned, a notary public in and for the county and state aforesaid, came Mary L. Vanier, President of Grand Mere Property Residential District Master Association, a Kansas corporation not organized for profit, said person being known to me to be the same person who executed the above instrument and acknowledged the same to be her voluntary act and deed for and on behalf of said corporation, as Master Association.

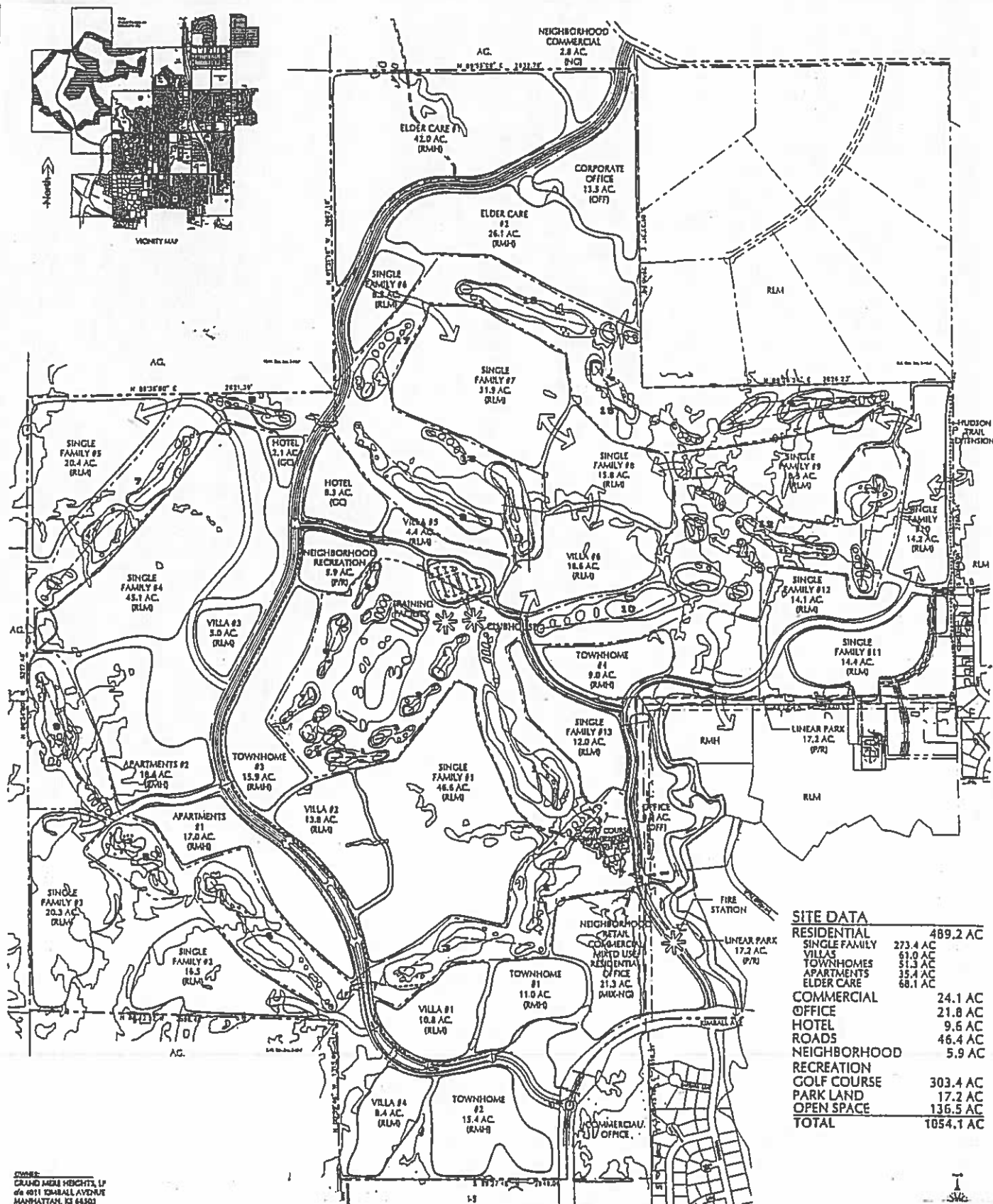
IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year last above written.

Lesli J. Hanson
Notary Public

My appointment expires: 8-18-2018



Grand Mere Master Plan



OWNER:
GRAND MEU HEIGHTS, LP
c/o 4011 KIMBALL AVENUE
MANHATTAN, KS 64503

EXHIBIT "B"

**Lots 1 through 12, Grand Estates Addition, an Addition in the City of
Manhattan, Riley County, Kansas.**