

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

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS is made and entered into as of this 1 day of ~~February~~ ^{MARCH}, 2006, by Grand Mere Development, Inc., a Kansas Corporation (herein called the "Developer"), and Thierer Construction, Inc., a Kansas Corporation, (herein 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 Community Association and supervision over the type and design of improvements which may be constructed within the Community and upon the Lots located therein; (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 the Developer and its partners. Each Owner, by accepting title to a Lot, and each Community Association 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 its partners 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, Developer is the record owner of that certain real property situated in Manhattan, Riley County, Kansas, described on Exhibit "A" attached hereto and by reference made a part hereof which shall partially constitute the Community; and

WHEREAS, Developer has transferred to Thierer the real estate described on Exhibit "B" attached hereto, which shall complete the constitution of the Community; and

WHEREAS, it was understood by Thierer that in being the transferee of the above described property, said property could 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



M. Charlotte Shawver
Register of Deeds
Riley County, Kansas
Book: 822 Page: 2109
Receipt #: 41811 Total Fees: \$176.00
Pages Recorded: 43
Date Recorded: 3/1/2006 11:45:46 AM

WHEREAS, Developer and Thierer deem it desirable to establish easements, covenants, conditions, obligations, and restrictions upon the Community and each and every portion 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 Community 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 benefit its Members, the Community, or the owners of any interests therein; and

WHEREAS, Grand Vista Community Association, a 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, the Developer may, but is not obligated to, annex additional real property to the Community, and thereby subject such property to this Declaration, and to bind the owners of any interests therein to the easements, covenants, conditions, and restrictions contained in this Declaration; 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 interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the Community.

NOW, THEREFORE, Developer and Thierer, for the purposes above set forth, declare that all 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 property within the Community and all parties having or acquiring any right, title, or interest in or to any 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 Community Association.

ARTICLE I

Definitions

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of each word of such term capitalized.

- 1.1 "Thierer" means Thierer Construction, Inc., a Kansas Corporation.
- 1.2 "Annexation Property" means any additional real property which is annexed to the Community, thereby becoming a part thereof and subject to this Declaration, in accordance with the provisions of Article X.
- 1.3 "Assessments" shall include the following:
 - (a) "Regular Assessment" means the amount which is to be paid by each Owner as such Owner's Proportionate Share of the Common Expenses and Maintenance Expense incurred by the Community Association pursuant to the terms hereof.
 - (b) "Special Assessment" means (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Community Association for costs incurred in bringing the Owner into compliance with the provisions of this Declaration, the Design Standards, the Community Association Rules, or the Articles or Bylaws of the Community Association; (ii) any other charge designated as a Special Assessment in this Declaration, the Community Association Articles or Bylaws, the Community 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 this Declaration.
- 1.4 "City" means the City of Manhattan, Kansas, a municipal corporation of the State of Kansas
- 1.5 "Common Expenses" means the actual costs incurred by the Community Association in conducting activities in connection with the Community for which the Community Association is responsible pursuant to the terms hereof. Common Expenses contemplated hereby shall include, but not be strictly limited to, the following:
 - (a) the cost of maintenance, management, operation, repair, and replacement of all areas and facilities within the Community which are maintained or operated by the Community Association;
 - (b) unpaid Assessments;
 - (c) the cost of management and administration of the Community Association including, but not limited to, compensation paid by the Community Association to managers, accountants, attorneys, other professionals and employees;
 - (d) the cost of utilities (including but not limited to water, electricity, gas, sewer, trash pick-up and disposal, which are provided directly to the Community Association and not individually metered or assessed by Lot), landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Community and which are provided by the Community Association;

- (e) maintenance expenses as defined in paragraph 1.23 below;
 - (f) the cost of any insurance maintained by the Community Association;
 - (g) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Community Association;
 - (h) the cost of bonding any person handling the funds of the Community Association;
 - (i) taxes paid by the Community Association;
 - (j) costs incurred by committees established by the Community Association Board or President;
 - (k) the costs of any other item or items to be provided or performed by the Community Association pursuant to this Declaration or its Articles or Bylaws, or in furtherance of the purposes of the Community Association or in the discharge of any duties or powers of the Community Association.
- 1.6 "Community" means the land described on **Exhibits "A" and "B"**, together with any Annexation Property, and the residential development thereon.
- 1.7 "Community Association" means the Grand Vista Community Association, a Kansas corporation not organized for profit.
- 1.8 "Community Association Articles" means the Articles of Incorporation, as such may be amended from time to time, of the Community Association.
- 1.9 "Community Association Board" means the Board of Directors of the Community Association.
- 1.10 "Community Association Bylaws" means the bylaws of the Community Association adopted in accordance with the Community Association Articles; as such bylaws may be amended from time to time.
- 1.11 "Community Association Declaration" means this Declaration and any amendments thereto or modifications thereof.
- 1.12 "Community Association Member" means any Person who holds a membership in the Community Association.
- 1.13 "Community Association President" means the duly elected or appointed president of the Community Association.

- 1.14 "Community Association Rules" means the rules and regulations adopted by the Community Association.
- 1.15 "Default Rate of Interest" means an annual rate of interest equal to the base rate as publicly announced by Commerce Bank, Kansas City, Missouri (as the rate publicly announced as available to its largest and most creditworthy customers) from time to time while interest is accruing (with interest hereunder adjusted as and when said prime rate plus 4% per annum is less than 18%, interest shall accrue during said periods at 18% per annum). Notwithstanding anything herein to the contrary, if, during any period, the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be the highest lawful rate. If Commerce Bank should cease doing business or no longer announces its base rate as described above, the Community Association may compute interest hereunder based upon the publicly announced base rate of any other bank doing business in Kansas. If banks should cease announcing base rates, the Community Association may elect to use 18% as the Default Rate of Interest, or may specify the rate, in lieu of said base rate, for purposes of the computation hereunder which the Community Association would reasonably have to pay to borrow money at the time.
- 1.16 "Design Standards" means the rules, regulations, restrictions, architectural standards, and construction guidelines herein designated as such and otherwise from time to time adopted by the Design Review Committee.
- 1.17 "Design Review Committee" means the committee provided for in Article VII, entitled "Architectural and Landscape Control."
- 1.18 "Developer" means Grand Mere Development, Inc., a Kansas corporation, its successors and assigns, or any person to whom the Developer's rights hereunder are hereafter assigned by Recorded instrument.
- 1.19 "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.
- 1.20 "Golf Club" means the Colbert Hills Golf Course and related facilities constructed on property including all buildings, vehicles, and equipment associated therewith, together with the clubhouse.
- 1.21 "Golf Course" means the Colbert Hills Golf Course constituting a part of the Golf Club.
- 1.22 "Lot" means a subdivided lot within the Community as shown on the applicable Plat.
- 1.23 "Maintenance Expenses" means the actual costs incurred by the Community Association in contracting services in connection with landscape maintenance and snow removal on behalf of each Owner. Maintenance Expenses contemplated hereby shall include, but not be limited to, the following:

- (a) Routine mowing, fertilizing, maintenance and trimming of lawns
 - (b) Monitoring of all in-ground irrigation systems
 - (c) Snow removal from any front porch, sidewalk and driveway located upon the properties.
- 1.24 "Majority", where not specifically designated otherwise, means at least 50.1% of the total votes entitled to be cast with respect to a given matter.
- 1.25 "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.
- 1.26 "Master Association Articles" means the Articles of Incorporation, as such may be amended from time to time, of the Master Association or of any successor thereto.
- 1.27 "Master Association Board" means the Board of Directors of the Master Association
- 1.28 "Master Association Bylaws" means the bylaws of the Master Association, or of any successor thereto, adopted in accordance with the Master Association Articles, as such bylaws may be amended from time to time.
- 1.29 "Master Association Member" means every person who holds a membership in the Master Association.
- 1.30 "Master Association President" means the duly elected or appointed president of the Master Association
- 1.31 "Master Declaration" means that certain Declaration of Easements, Covenants, Conditions, and Restrictions of Grand Mere Property Residential District and any amendments thereto or modification thereof
- 1.32 "Master Plan" means the plan for the overall development of Grand Mere which includes site data showing residential and commercial development, roads, neighborhood recreation areas, golf course, park land and open spaces. The Master Plan is attached as Exhibit "C" to this Declaration.
- 1.33 "Mortgage" means any recorded, filed, or otherwise perfected instrument given in good faith and 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.
- 1.34 "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.

- 1.35 "Occupant" means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant, or otherwise.
- 1.36 "Owner" means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is a part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.37 "Owner's Proportionate Share" means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Community and the denominator of which is the total number of Lots then within the Community. This Section shall be subject to the provisions of Section 8.13 of Article VIII.
- 1.38 "Person" means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and their respective heirs, successors, and assigns.
- 1.39 "Plat" means collectively each plat of subdivision of the Community as first Recorded in the official records of Riley County, Kansas, and as thereafter from time to time amended or supplemented.
- 1.40 "Record" or "Recording" means an instrument of record in, or the act of recording an instrument with, the office of the Register of Deeds for Riley County, Kansas.
- 1.41 "Residential District Rules" means the rules adopted by the Master Association Board pursuant to the provisions of the Master Declaration.
- 1.42 "Screen" means to partition in a manner such that one cannot see through the partition.
- 1.43 "Supplemental Declaration" means a declaration of easements, covenants, conditions, and restrictions, or similar instrument, annexing additional real property to the Community and subjecting such real property to this Declaration.
- 1.44 "Thierer" means Thierer Construction, Inc., a Kansas corporation.

ARTICLE II

The Declaration

In accordance with the provisions of the Master Declaration, Developer and Thierer hereby establish the Community and this Community Declaration to govern the use and occupancy of Lots within the Community. In the event of any conflict between this Community Declaration and any provision of the Master Declaration, the Master Declaration shall in all cases control.

ARTICLE III
Community Association

3.1 Purpose of the Community Associations. The Community Association has been, or will be, incorporated as a corporation not organized for profit under the laws of Kansas. The Community 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 Community Association Articles, the Community Association Bylaws, the Community Association Rules, or Design Standards. The Community Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the benefit of the Community in accordance with the provisions of the Community Declaration, Community Association Articles, and Community Association Bylaws.

3.2 Membership in Community Association.

(a) Subject to the provisions of Section 3.17 of Article III hereof, each Owner (notwithstanding the number of Lots owned) shall be entitled to only one Community Association Membership and one vote in the Community Association so long as he or she is the Owner of such Lot(s), and such Owner shall specify in writing to the Community Association the name of the individual who will hold the Community Association Membership. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Community Association Member must be an individual who is either an Owner, or if the Owner is or includes a Person other than an individual, the Community Association Member may be an individual who is a partner if the Owner is or includes a partnership, or an officer of a corporation if the Owner is or includes a corporation, or a beneficiary of the trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, a partnership, a corporation, or a trust.

(b) Subject to the provisions of Subsection 3.2(a) of Article III, once a Community Association Member has been specified by an Owner of a Lot, a new Community Association Member may only be specified for that Lot upon at least 15 days' prior notice to the President of the Community Association; provided, however, the foregoing shall not impair the provisions of Subsection 3.2(c) of Article III.

(c) A membership in the Community Association shall not be transferred, pledged, or alienated in any way, except as herein expressly provided. Subject to the provisions of Subsection 3.2(a) of Article III, Community Association Membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and

then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

3.3 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his or her Community Association Membership with respect to his or her Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Community Association. In the event that more than one such instrument has been filed, the Community Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.4 Assignment of Developer's Voting Rights. If any lender to whom the Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of the Developer by virtue of said assignment, the absolute voting rights of the Developer as provided in Section 3.17 of Article III shall not be terminated thereby, and such lender shall hold the Developer's memberships and voting rights on the same terms as they were held by the Developer pursuant hereto.

3.5 Board of Directors of the Community Association.

(a) The affairs of the Community Association shall be conducted by the Community Association Board as herein provided and in accordance with the Community Association Articles and Community Association Bylaws. Except for directors elected by the Developer as provided for in Section 3.17 of Article III, each director shall be a Community Association Member or the spouse of a Community Association Member. If a director shall cease to meet such qualifications during his or her term, he or she will thereupon cease to be a director and his or her place on the Community Association Board shall be deemed vacant.

(b) Except for directors elected by the Developer as provided for in Section 3.17 of Article III, the members of the Community Association shall have the power and right to appoint and remove the members of the Community Association Board as provided in the Community Association Articles and Community Association Bylaws.

(c) Any member of the Community Association Board may be removed from office, by action of the Community Members, in accordance with the following procedures: Upon the presentation to the Community Association President of a petition duly executed by 34% or more of all of the Community Association Members in favor of the removal from office of the member or members of the Community Association Board therein named, a referendum of the Community Association Members shall be promptly held to determine whether such member or members of the Community Association Board should be removed from office. Upon the affirmative vote of two-thirds of all of the Community Association Members then entitled to vote to remove such member or members of the Community Association Board from office, such member or members

shall be deemed removed from office. Any vacancy on the Community Association Board created by the removal of a member of the Community Association Board as herein provided shall be filled by an election of all of the Community Association Members in the manner provided in the Community Association Articles or Community Association Bylaws for the election of directors.

3.6 Duties and Powers of the Community Association.

(a) To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Subsection 3.6(b) of Article III, the President of the Community Association shall be empowered to exercise control over the affairs of the Community Association and to act on behalf, and bind, the Association in every instance wherein the Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board of the Community Association.

(b) Notwithstanding anything in Subsection 3.6(a) of Article III to the contrary, the President shall not have the power to borrow any funds on behalf of the Community Association, make any expenditures on behalf of the Community Association which are, in the aggregate, more than 5% in excess of the total amount of the Community Association's budget, or increase the amount of or levy any Assessment (except a Special Assessment), without the prior approval of the Board of the Community Association.

(c) The Community Association President may appoint such assistants as he or she deems necessary and appropriate. No compensation shall be paid to any assistant except as provided in the budget of the Community Association or as otherwise approved by the Board of the Community Association.

(d) Any right or power herein given or delegated to the Community Association President which cannot be exercised by such President, whether by reason of law, or otherwise, shall be deemed to be a right or power to be exercised by the Board of the Community Association.

(e) The Community Association shall own and maintain the Drainage Structure within the real estate described on Exhibit "B" to be denominated as Tract A on the Plat to be filed for Grand Vista, Unit 1, and consisting of 1.87 Acres. Said tract shall be reserved for open space and stormwater drainage easement and detention facilities. The Community Association shall be responsible to maintain the Drainage Structure so that it is adequately, and appropriately, fulfilling its public purpose and so that it is not in violation of any applicable rule, regulation, statute, law or ordinance. Costs of ownership and maintenance of said area shall be a common expense.

3.7 President's Determination Binding. In the event of any dispute or disagreement between any Owners, Community Association Members, or any other Persons subject to this Declaration, relating to the Community, or any question of interpretation, or application of the provisions, of this Declaration, the Community Association Articles or Bylaws,

any Community Association Rules or other rules of the Community Association, or any Design Standards, the determination thereof by the Community Association President shall be final and binding on each and all of such Owners, Community Association Members, or Persons. The Community Association President may, at his or her election, delegate the resolution of such dispute or disagreement, to the Community Association Board or a committee appointed by the Community Association President.

3.8 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration or the Articles or Bylaws of the Community Association, any provision of the foregoing which requires the vote or written assent of the members of the Community Association shall be deemed satisfied by the following:

(a) The vote in person, or by proxy, of the specified percentage of Community Association Members entitled to vote at a meeting duly called and noticed pursuant to the provisions of the Community Association Articles or Bylaws, dealing with annual or special meetings of the Members of the Community Association.

(b) Written consents signed by the specified percentage of members then entitled to vote as provided in the Bylaws of the Community Association.

3.9 Additional Provisions in Articles and Bylaws. The Articles and Bylaws of the Community Association may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, and Members not inconsistent with law or this Declaration.

3.10 Community Association Rules. In order to be able to address specific matters relating to the administration, operation, and development of, or other matters relating to, the Community, the Community Association Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Community Association Rules"). The Community Association Rules may include the establishment of a system of fines and penalties enforceable as Special Assessments or otherwise. The Community Association Rules shall not be inconsistent with the terms of this Declaration, the Master Association Declaration or the Residential District Rules. The Community Association Rules may not unreasonably or unlawfully discriminate among Owners and Community Association Members. A copy of the Community 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 Community Association Rules shall be delivered to each Community Association Member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, the Community 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 Community Association Members, and all other Persons having any interest in, or making any use of, the Community Association, whether or not actually received thereby. The Community Association

Rules, as adopted, amended, or repealed, shall be available at the principal office of the Community Association to each Owner, Community Association Member, or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Community Association Rules and any provisions of this Declaration or the Community Association Articles or Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Articles or Bylaws to the extent of any such conflict.

- 3.11 **Indemnification.** To the fullest extent permitted by law, every director and every officer of the Community Association, and the members of the Design Review Committee, Thierer, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal, or control over members of the Community Association Board or the Design Review Committee), and Grand Mere Realty, LLC, shall be indemnified by the Community Association, and every other person serving as an employee, or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board of the Community Association, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Community Association (or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of the Community Association Board or the Design Review Committee) whether or not he or she is a director, an officer, or a member of the Design Review Committee, 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 Community Association Board shall determine, in good faith, that such officer, director, member of the Design Review Committee, Thierer, or other Person or the Developer, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent 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 Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to Article V to cover any liability exposure created by virtue of the foregoing indemnification.
- 3.12 **Non-Liability of Officials.** To the fullest extent permitted by law, neither the Developer, Thierer, Grand Mere Realty, LLC, the Community Association President, any directors or officers of the Community Association, any Design Review Committee member, nor any other members of committees of the Community Association shall be liable to any Community Association Member or any Owner, Occupant, 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, negligence, or the like made in good faith and which the Developer, Thierer, Grand Mere Realty, LLC, the President, any director, any officer, or any member such committees reasonably believed to be within the scope of his or her duties.

- 3.13 Easements. The Community Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Community 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 "Residential District" (as such term is defined in the Master Declaration), or the preservation of the health, safety, convenience, and welfare of, the Owners.
- 3.14 Accounting. The Community Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours, books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.
- 3.15 Records. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Community association Member the books, records, and financial statements of the Community Association together with current copies, as amended from time to time, of this Declaration and the Community Association Articles, Bylaws and Rules, and Design Standards. The Developer shall be under no obligation to make its own books and records available for inspection by the Community Association, or any Owner, Community Association Member or other Person.
- 3.16 Managing Agent. Any powers, duties, and rights of the Community Association created pursuant hereto, or of the Community Association President, or Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 60 days' prior written notice.
- 3.17 Developer's Control of the Community Association. Notwithstanding anything in this Article III or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Community Association and the Design Review Committee, including appointment and removal of the President and all other officers of the Community Association, all directors of the Community Association Board and all members of the Design Review Committee, until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as Exhibit "C", has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan. Until such time, only the Developer will be entitled to cast any votes with respect to the election and removal of Community Association

officers or directors and members of the Design Review Committee, or any other matter requiring the vote or approval of Community Association Members. The Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Section.

ARTICLE IV Creation of Lien and Personal Obligation

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay all of the following to the Community Association in accordance with the terms hereof: Regular Assessments and Special Assessments. Such Assessments shall be collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him. If an Owner shall consist of more than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several.

4.1 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the Community Association shall be used: (a) to promote the health, safety, and welfare of Owners, (b) to enhance the value of the Community, (c) to pay the costs of administration of the Community Association, (d) to pay all other Common Expenses, or (e) to otherwise further the interests of the Community. Where a Lot has separate gas, electrical, sewer, or other similar utilities service, the cost of the same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a Lot shall be the responsibility of its Owner.

4.2 Regular Assessments.

(a) Except as otherwise specifically provided herein, each Owner of a Lot shall pay as its Regular Assessment its Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be provided in the Community Association Articles or Bylaws, or as determined by the Community Association.

(b) Not later than 30 days prior to the beginning of each fiscal year of the Community Association, the Community Association shall make available for review by each Owner at the Community Association's office, during reasonable times, a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred by such Association for such fiscal year. The Community Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Each Owner shall thereafter pay to the Community Association its entire Regular Assessment as so

determined on or before the beginning of the Community Association's fiscal year, which date shall be set forth in the written notice sent to Owners.

(c) If the Community 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, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Community Association's budget for that year, the Community Association President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Community Association Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when 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 estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses, the Community Association may, at the discretion of the Community Association Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity, or quality, of services upon which the Common Expenses for the year in question are based, and if supplemental assessments are required, they shall be made as set forth above.

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

(a) Costs incurred in bringing an Owner or his Lot into compliance with the provisions of this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules.

(b) Fines levied or fixed by the Community 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 Community Association Articles or Bylaws, or the Community Association Rules.

(d) Any other charge designated as a Special Assessment in this Declaration, the Community Association Articles or Bylaws, or the Community Association Rules.

In the event the Community Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment.

4.4 Uniform Assessment. All Regular Assessments imposed upon an Owner shall be based upon such Owner's Proportionate Share.

- 4.5 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein. Additionally, all properties owned by the Developer shall be exempt from the Assessments created herein unless the Developer elects at its discretion to pay the assessments on said properties so owned.
- 4.6 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each Owner on the date of its creation. The Regular Assessment shall be equitably adjusted as required for short periods.
- 4.7 Time and Manner of Payment; Late Charges and Interest. Assessments shall be due and payable by Owners in such manner and at such times as the Community Association shall designate in accordance with the terms hereof. If not paid within ten (10) days after its due date, each such Assessment shall have added to it a late charge equal to 10% of the amount of Assessment and thereafter bear interest at the Default Rate of Interest until paid. The Community Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Community Association as a result of such delinquency, and if any suit, action, or proceeding is brought to collect any such Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.
- 4.8 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, including, without limitation, a claim that (a) the Community Association, its Board, its President, Thierer or the Developer is not properly exercising its duties and powers as provided in this Declaration or documentation associated therewith; or (b) Assessments for any period exceed Common Expenses.
- 4.9 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 (whether such liens are now in existence or are created at any time in the future), the benefit of any redemption, homestead, or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.
- 4.10 Reserves. Reserves included in any budget for Common Expenses which are collected as part of Regular Assessments shall be deposited by the Community Association in a separate bank account to be held in trust for the purposes for which they are budgeted and are to be segregated from and not commingled with any other funds of the Community Association, except to the extent that the Community Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws (tax or otherwise) of the State of Kansas or the United States relating to corporations not organized for profit, or homeowners' associations. Such reserves shall be deemed a contribution to the capital account of the

Community Association. The responsibility of the Community Association Board (whether while controlled by the Developer or the members of the Community Association) shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither the Developer, such Board, nor any member thereof shall have any liability to the Community Association or any Owner, Community Association Member, if such reserves prove to be inadequate.

- 4.11 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 attorney's fees, and any late charges related 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 Mortgage 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 Community Association, such lien shall be released in writing by the Community 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 Community Association among all Owners as part of the Common Expenses.
- 4.12 Certificate of Non-Payment. Upon request, any Person acquiring an interest in any Lot shall be entitled to a certificate from the Community 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.
- 4.13 Enforcement of Lien. Any lien provided for in this Article IV may be foreclosed by the Community Association in any manner provided, or permitted, for the foreclosure of realty mortgages in the State of Kansas. All of the provisions of this Article IV relating to the enforcement of any lien provided for herein (including without limitation the subordination provisions in Section 4.11 of Article IV or the provisions of this Section 4.13 of Article IV) shall apply with equal force in each other instance provided for in this Declaration or the Community Association Rules or the Community Association Articles or Bylaws wherein it is stated that payment of a particular Assessment, charge, or other sum shall be secured by a lien. Nothing herein shall be construed as requiring that the Community Association take any action allowed hereunder in any particular instance, and the failure of the Community Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time, or in a different instance.

- 4.14 Pledge of Assessment Rights as Security. The Community Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligation of the Community Association; provided, however, any such action shall require the prior affirmative vote, or written assent, of the Developer, if it controls the Community Association, or otherwise, a Majority of all of the members of the Community Association. The Community 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 Community Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Community Association and used by the Community Association as required, unless and until the Community Association shall default on its obligations secured by said assignment.

ARTICLE V

Insurance

- 5.1 Authority to Purchase. The Community Association shall purchase and maintain such insurance, and in such amounts, as its Board shall determine from time to time. Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Community Association. The Community Association shall make same available to the Community Association Members in order to permit such Members to determine which particular items are included within the coverage. If they so desire, any Owners or Community Association 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 Community Association. The Community Association shall not purchase any insurance which shall impair or adversely affect any insurance maintained by the Master Association.
- 5.2 Member's Responsibility. It shall be each Owner's responsibility to purchase, at his own cost, such insurance as he deems appropriate for his own: Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere within the Community, personal liability, and such other insurance which the Owner desires.
- 5.3 Non-Liability of Community Association/Board/President. Notwithstanding anything in this Declaration to the contrary, neither the Community Association nor any member of its Board nor any officer of the Community Association, nor Thierer, nor the Developer shall be liable to any Owner or Community 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 Community Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.
- 5.4 Premiums. Premiums upon insurance policies purchased by the Community Association shall be paid by the Community 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.

- 5.5 **Insurance Claims.** The Community Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Community 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 Community Association has full and complete power to act for the Community 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 Community Association.
- 5.6 **Benefit.** Except as otherwise provided herein, all insurance policies purchased by the Community Association shall be for the benefit of, and any proceeds of insurance received by the Community Association, or any insurance trustee, shall be held or disposed of in trust for the Community Association and the Owners, as their interests may appear.

ARTICLE VI

Maintenance, Repairs, and Replacements

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

ARTICLE VII

Architectural and Landscape Control

- 7.1 **Design Review Committee.** The Community Association shall have a Design Review Committee consisting of not less than three (3) nor more than five (5) persons, as specified from time to time by the Developer during periods in which the Developer has the right to appoint the members of the Design Review Committee, and thereafter, by resolution of the Board of the Community Association. The Developer shall retain the right to appoint, augment, or replace all members of the Design Review Committee for the Community until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as **Exhibit "C"**, has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan. Thereafter, members of the Design Review Committee shall be appointed

by the Board of the Community Association. Persons appointed to the Design Review Committee, other than those Persons appointed by the Developer, must be Community Association Members. Even after control is thus relinquished by Developer, Developer shall retain final authority over the decisions of the Design Review Committee until all land is developed within the Residential District. The Developer voluntarily may (but shall not be required to) permit Community Association Members to appoint or replace one or more members of the Design Review Committee at any time.

7.2 Establishment of Design and Construction Standards. In order to achieve uniformity and coordination within the Community, Design Standards therefore are hereby established set forth in Section 7.3 of Article VII. The Construction Standards are hereby established as set forth in Section 7.4 of Article VII. 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.

7.3 The Design Standards.

- (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 Lot Owner and in conformance with the stormwater permits issued by the City and /or the State of Kansas.
 - (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 property 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 Design Review Committee. Only black metal fences with 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 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 Design Review Committee 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 Design Review Committee. 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. Plain gray block walls are not permitted. Stacked, interlocking 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 Design Review Committee, and their design should be included in the plans submitted for the home.

(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) standard light fixture on top of their mailbox. The following specifications will be used as a guideline for the construction of all light posts and mailbox posts:

- (a) Post material type is to be brick, stone, or stucco;
- (b) All mailbox units will be black in color;
- (c) One (1) standard light fixture type to be selected by Developer;
- (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.
- (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. Tennis court lighting is not allowed. Holiday lights may be displayed from November 15 thru January 30 and must be taken down by January 30

(e) Construction Period Requirements. During the period that a site and/or building are under construction, the following minimum measures shall be required to minimize disturbance to adjacent sites:

- (1) No Lot is to be cleared or construction otherwise started without prior written approval of the plans for that Lot by the Design Review Committee.
- (2) Contractors will assume complete responsibility for the actions of their workers as well as those of their sub-contractors.

(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. All pool areas and equipment associated therewith, and screening shall be approved by the Design Review Committee.

(i) Tennis Courts. No tennis courts or tennis court type lighting shall be allowed.

7.4 Construction Standards.

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

Grand Vista

All Lots

-Ranch, one story above grade 1,300 sq. ft.

-Multiple stories will be allowed only if the top floor of finished space is finished within the natural roof line of a one story home. No true two story home will be allowed. Main floor square footage must meet the minimum for a ranch style home.

- (b) **Roofs.** Roofs shall be architectural grade asphalt composition shingles rated at (30) thirty years or more that have been approved by Thierer.
- (c) **Colors and Materials.** All exterior colors are subject to review and approval by the Design Review Committee.
- (d) **Garages.** Side entry garages are encouraged, but not required. All garages must be two (2) car width or larger. If there are only two (2) stalls, each stall 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, the house 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: Vinyl or aluminum siding; 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 the 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 windows, and either be functional or appear functional.

7.5 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 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.

7.6 Review Process.

(a) Signed plan approval by the Design Review Committee shall be required prior to the undertaking of any site improvements, construction, or installation, including clearing, grading, paving, signs, structures, landscaping, building additions or alterations, and subdivisions. Review shall be coordinated with the required governmental approvals. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the Design Review Committee. All submissions to the Design Review Committee are to be made within the time periods established by the Design Review Committee and shall be in triplicate on forms or in a format approved by the Design Review Committee.

(b) Review Fees: Plans submitted to the Design Review Committee for approval may be subject to the applicable review fees as established by the Design Review Committee.

7.7 Interpretation and Waiver. In order to meet special situations which may not be foreseen, it may be desirable from time to time for the Design Review Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the context of the specific project in question with the welfare of the overall Community in mind. All approvals and consents of the Design Review Committee shall be in writing, and oral approvals or consents shall be of no force or effect.

7.8 Design Review Committee Authority and Limits of Liability.

(a) The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by such Design Standards, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

(b) The address of the Design Review Committee shall be the address established from time to time by resolution of the Community Association. Such address shall be the place for the submittal of plans and specifications.

(c) The establishment of the Design Review Committee and Design Standards shall not be construed as impairing the obligation of any Owner to maintain or repair his Lot as may otherwise be specified in this Declaration, the Community Rules, or Community Association Articles or Bylaws.

(d) No Residence, fence, wall, or other structure, or improvement of whatever type shall be commenced, erected, or maintained within the Community, nor shall there be any addition to 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 covers, and fences, except in compliance with plans and specifications which have been submitted to and approved by the Design Review Committee. The Design Review Committee 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) poor overall design quality; (iii) incompatible design elements; (iv) inappropriate design concept 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 which cannot be completely reduced to Design Standards, the appropriate Design Review Committee shall also have the right to reject plans and specifications conforming to the Design Standards if the Committee believes that the overall aesthetic impact of any proposed improvement, addition, alteration, or change is detrimental to the Community.

(e) By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Community Association, any of its members, its officers, its Board, Grand Mere Realty, LLC, Thierer, nor the Developer assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Community Association, its officers, its Board, Thierer, nor the Developer 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, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development, or manner of development, of any property within the Community; or (iv) the execution and filing of any estoppel certificate pursuant to Subsection 7.6(f) of Article VII or otherwise, whether or not the facts therein are correct; provided, however, that such action, on the basis of the actual knowledge possessed by the Person in question, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with

applicable governmental ordinances and regulations including, but not limited to, zoning ordinances and building codes.

(f) Any member or authorized consultant of the Design Review Committee, the Developer or its representatives, or any authorized officer, director, employee, or agent of the Community 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 ascertain that such improvements have been, or are being, built in compliance with the plans and specifications approved by the Design Review Committee, the Design Standards, and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 30 days) of a request from any Owner as to his or her Lot which request shall contain an affirmative statement by such Owner of such Owner's good faith belief that such Owner is in compliance with the approved plans and specifications, the Design Standards, and the other provisions hereof.

(g) The Community Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration or the Master Declaration in order to enforce compliance with the Design Standards set forth herein. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE MASTER ASSOCIATION OR COMMUNITY ASSOCIATION BOARD MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL. The Community Association may further take such legal action as it deems necessary to enforce such compliance as set forth in Section 8.23 of Article VIII.

- 7.9 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 Design Review Committee are at variance with the public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of the property will be made by the City.

ARTICLE VIII

Use and Occupancy Restrictions

In addition to the Use and Occupancy Restrictions established in the Master Declaration, the restrictions hereinafter set forth in this Article VIII are hereby established in the Community.

8.1 Residential Use. Each Lot within the Residential District may be used only for residential purposes and no other, except that home occupations, as defined in this Article 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 pupil at a time, except for occasional groups.
- (c) Artists, sculptors and authors or composers.
- (d) Ministers, rabbis, priests.
- (e) Offices.
- (f) 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 articles produced by persons residing on the premises, and except for items customarily stored or sold through a home occupation.
- (b) No alteration of the principal residential building shall be made which changes the character thereof as a dwelling.
- (c) No more than 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 50% of the 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 in 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 shall be permitted.
- (h) There shall be no noise, smoke, dust, odor, or vibrations emanating from the property which unreasonably either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of persons off of said property.

In the event of a question regarding whether a proposed or existing home occupation complies with this Article, the decision of the Design Review Committee 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 XI.

- 8.2 **Signs.** No permanent sign of any kind shall be displayed to the public view, or from any Lot, or any Common Maintenance Areas, without approval of the Master Association, the applicable Community Association, or the responsible Design Review Committee, except for the following temporary signs ("Permitted Signs"): (a) such signs as may be used by Developer in connection with the development and sale of Lots in the Residential District; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and regulation of Common Maintenance Areas; (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 Maintenance Area; and (iii) only one real estate for sale sign shall be placed on each lot; (e) signs promoting political candidates, but only 30 days before and 5 days after the day of election, and only located upon the lot of the owner; (f) builder signs, one per lot. Permitted Signs shall not exceed five square feet in total area or be more than three feet in height. Nothing contained herein shall be deemed to limit the Developer's rights as set forth in Article XI. The Developer or the Community Association shall have the right to remove any sign that violates these sign conditions and to remove signs erected on the right-of-way, common grounds, or on private property.
- 8.3 **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 Community 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.
- 8.4 **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 Community Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.
- 8.5 **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 Community 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.

- 8.6 Lights. No spotlights, flood lights, or other lighting, shall be placed or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots.
- 8.7 Antennas. Other than one (1) 18" to 24" satellite dish per unit, 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 Design Review Committee. Satellite dish location must be approved prior to installation by the DRC.
- 8.8 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 Community 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 Community Association.
- 8.9 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.
- 8.10 Safe Condition. Without limiting any other provision in this Article VIII, 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.
- 8.11 Basketball Goals. No basketball goals shall be attached to any building. All basketball goals shall be free standing and located behind the front building set back line shown on the applicable Plat. All such goals and devices are otherwise subject to the approval of the Design Review Committee.
- 8.12 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.
- 8.13 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.

- 8.14 **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 Design Review Committee (each such approved combination of Lots being called a "Combined Lot"); provided, however, (i) for all purposes of determining Owner's Proportionate Share, a Combined Lot shall be deemed only one Lot; (ii) all Assessments in respect of a Combined Lot shall constitute a lien, as provided in Article IV, upon the entire Combined Lot held by the Owner; and (iii) the Owner of each Combined Lot shall be entitled to the rights of only one Community Association Membership in respect of all such Lots so combined. In addition, once two 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.
- 8.15 **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 been intentionally contoured to facilitate drainage, except that, with the prior consent of the City and the Design Review Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.
- 8.16 **Outbuildings Prohibited.** No building or other detached structure may be erected on any Lot without the consent of the Design Review Committee.
- 8.17 **Above-Ground Swimming Pools.** No above-ground swimming pools shall be allowed on any Lot.
- 8.18 **Storage Tanks.** No exterior storage tank for fuel or anything else shall be allowed on any Lot.
- 8.19 **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.
- 8.20 **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 Community 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 property shall be rented for transient purposes or without the prior written approval of the Board of Directors, for any period of less than three (3) months or to more than two (2) unrelated persons or more than one (1) family. No Owner shall be entitled to rent his or her property if he or she is delinquent in the payment of any assessment required by the Community Association Declaration or the Master Declaration. Any lease or rental agreement pertaining to a property shall be approved by the Community Association

Board prior to any lessee or tenant taking occupancy thereunder. The Community Association Board may require standardized leases or rental agreements with respect to all properties; provided, however, that the amount of rent shall not be subject to approval or standardization by the Community Association Board. All leases or rental agreements shall contain a provision to the effect that the rights of the tenant to use and occupy the property shall be subject and subordinate in all respects to the provisions of the

Community Association Declaration, the Master Declaration, Community 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.

- 8.21 Solar Panels. Solar panels shall not be erected without the prior written consent of the Design Review Committee, and in no event shall the same face any street.
- 8.22 Lawn Ornamentation. No lawn ornaments of any kind are permitted in yards visible from any street or the Golf Course without approval of the Design Review Committee. There shall be no painting of curbs, steps, the public street, or other site amenities with logos, address numbers, advertising messages, or slogans.
- 8.23 Landscape Maintenance. Owners will be required to use the landscape service provider contracted for by the Community Association for all routine mowing and trimming of the landscape, routine chemical lawn treatments, and administration and monitoring of all in-ground irrigation systems. The fees for landscape maintenance services will be incorporated into the Maintenance Expense (Common Expense) for the Community Association. Additional services may be included by a majority vote of the Owners.
- 8.24. Driveways and Sidewalks. All driveways must be completely paved with concrete. Owners will be required to use the services of the snow removal company contracted for by the Community Association for all snow removal on driveways and sidewalks. The fees for snow removal will be incorporated into the Maintenance Expenses (Common Expenses) for the Community Association. Each Owner shall be responsible for routine sweeping of driveways and sidewalks which are appurtenant to his or her property. In the absence of the Owner undertaking this responsibility, the Community Association shall perform such routine maintenance and charge the Owner for such maintenance.
- 8.25 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.

- 8.26 **Enforcement.** The Community Association or its authorized agents may enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to this Declaration or the Community Association Rules shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article IV hereof. All remedies described in Article XII 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 VIII.

ARTICLE IX Rights of First Mortgagees

- 9.1 **General Provisions.** Notwithstanding and prevailing over any other provisions of this Declaration, the Design Standards or Community Association Articles, Bylaws, or Rules, the provisions of this Article shall apply to and benefit each holder of a First Mortgage upon a Lot.
- 9.2 **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 Community Association, and the Community 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 Community Association or the Owner of the Lot.
- 9.3 **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.

- 9.4 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 Community Association in the place and stead of the defaulting Owner.
- 9.5 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 X

Annexation of Additional Property

- 10.1 Development of the Project. Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article X at such time as the Developer or Community Association may elect.
- 10.2 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes Annexation Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements, and other provisions of this Declaration and shall contain such other provisions as are necessary to designate such property. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions, and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify, or add to the covenants established by this Declaration with respect to the portion of the Community already subject to this Declaration, except that it may reduce the Proportionate Share of any Owner.
- 10.3 Annexation without Approval of Community Association. If added at the election of the Developer, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Community Association provided that a Supplemental Declaration covering the Annexation Property shall be recorded by the Developer. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making said real property subject to this Declaration and subject to the functions, powers, and jurisdictions of the Community Association, and thereafter said Annexation Property shall be part of the Community for all intents and purposes of this Declaration and all of the Owners of Lots in the Annexation Property shall automatically be Owners in accordance with the terms hereof.

ARTICLE XI
Exemption of the Developer 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 the Developer, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale, or leasing of the Lots, or any part of the Community, including, but not limited to the right to designate areas for temporary sales offices in the development.

ARTICLE XII
Remedies

- 12.1 General Remedies. In the event of any default by any Owner, Occupant, or other Person under the provisions of this Declaration, the Community Association, or the successors, assigns, or agents thereof, or the Developer, or its authorized assignee, shall have each and all of the rights and remedies which may be provided for in this Declaration, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Occupant, or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner.
- 12.2 Expenses of Enforcement. All expenses of the Community Association or the Developer or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Article XII, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner, or other Person, and the Community Association or Developer or its assignee shall have a lien as provided in Article IV therefore. In the event of any default by any Owner or other Person, the Community Association and the Developer, and any permitted manager or managing agent, if so authorized, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided in Article IV. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Community Association or the Developer.

- 12.3 Legal Action. In addition to any other remedies available under this Article XII, if any Owner (either by his or her conduct or by the conduct of any Occupant of his or her Lot or family member, guest, invitee, or agent) shall violate any of the provisions of this Declaration or any other document contemplated hereby, as then in effect, then the Community 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 other Person to comply with the provisions of this Declaration, or any other document contemplated hereby, and granting other appropriate relief, including money damages.
- 12.4 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions, and servitudes provided for in this Declaration, or any other document contemplated hereby, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein or therein specifically provided, each and all of said covenants, restrictions, reservations, conditions, and servitudes shall be binding upon and effective against any lessee or owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure, or otherwise.
- 12.5 Limitation on the Developer's Liability. Notwithstanding anything to the contrary herein, it is expressly agreed that neither the Developer (including without limitation any assignee of the interest of the Developer hereunder) nor any partner in the Developer partnership (or in any such assignee), nor Thierer shall have any personal liability to the Community Association or any Owner or Occupant, Community Association Member, or other Person, arising under, in connection with, or resulting from (including, without limitation, resulting from action or failure to act with respect to) this Declaration, the Articles, Bylaws, or Rules of the Community Association, the Design Standards or the Design Review Committee, or for any action taken or not taken pursuant to authority granted Developer therein or with respect thereto, except, in the case of the Developer (or its assignee) to the extent of its interest in the Community, and, in the case of a partner in the Developer (or in any such assignee), his or her interest in the Developer (or such assignee), and, in the event of a judgment against the Developer (or any partner or assignee thereof), no execution or other action as shall be sought or brought thereon against any other assets, nor be a lien upon such other assets, of the judgment debtor.

ARTICLE XIII Amendment

- 13.1 Amendments to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a Majority of the Community Association Board Members prior to its adoption by the Community Association Members. Amendments may be adopted at a meeting of the Community Association Members upon the approval thereof of two-thirds of all of the Community Association Members entitled

to vote thereat, or without any meeting if all Community Association Members have been duly notified and if two-thirds of all of the Community Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Community Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Community Association. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration in the appropriate governmental offices.

13.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the easements, covenants, conditions, and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section being amended or the amendment itself.

13.3 Required Approvals. Notwithstanding the provisions of the foregoing sections of this Article XIII:

(a) If this Declaration or any applicable provisions of law requires the consent or agreement of additional parties, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying, or rescinding any provision of this Declaration with respect to such action shall be signed by all such parties, as required by this Declaration or by said law.

(b) Until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as **Exhibit "C"**, has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan, this Declaration may not be amended by the Community Association Members pursuant to this Article XIII without the written consent of the Developer, which may be withheld for any reason.

13.4 Developer's Right to Amend. Notwithstanding any other provision of this Article XIII, until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, attached here to and incorporated herein as **Exhibit "C"**, has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan, the Developer reserves the right to amend this Declaration without the approval of the Community Association Board, Thierer, the Community Association Members, or any Owner or other Person; provided, however, that no such amendment shall have the effect of changing the Plat of an Owner's Lot without the consent of the Owner.

ARTICLE XIV

General Provisions

- 14.1 **Notice.** Notices provided for in this Declaration, or the Community Association Bylaws, or Community Association Rules, shall be in writing and shall be addressed to the Community Association at the address specified in the Community Association Bylaws. The Community Association may designate a different address or addresses for notice by giving written notice of such change of address to all Community Association Members at such time. All notices to Community Association Members shall be to the last address shown on the records of the Community Association. Any Community Association Member may designate a different address or addresses for notices to it by giving written notice of its change of address to the Community Association. Notices addressed as above shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of the receipt thereof.
- 14.2 **Captions and Exhibits; Construction.** Captions given to various Sections herein, and the Table of Contents for this Declaration, 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 herein above set forth.
- 14.3 **Severability.** If any provision of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules, or any section, clause, sentence, phrase, or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Community Association Articles or Bylaws, or Community Association Rules, and of the application of any such provision, section, sentence, clause, phrase, or word in any other circumstances, shall not be affected thereby, and the remainder of this Declaration, the Community Association Articles or Bylaws or Community Association Rules shall be construed as if such invalid part were never included therein.
- 14.4 **Term.** This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2070. Thereafter, unless one (1) year prior to January 2, 2070, there shall be Recorded by an instrument directing the termination of this Declaration signed by at least two-thirds (2/3) of all Community Association Members then entitled to vote, this Declaration shall be automatically continued without any further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years each; provided, that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as set forth in this Section.

- 14.5 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 21 years after the death of the last survivor of the now living descendants of Joseph P. Kennedy.
- 14.6 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to separately mortgage his or her Lot. No Owner shall have the right or authority to make, or create, or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Community or any part thereof, except only to the extent of his or her Lot.
- 14.7 Power of Attorney. Whenever the Community Association is granted rights, privileges, or duties in this Declaration, the President shall have the authority to act for the Community Association, unless such right and power is hereby expressly reserved to the Community Association Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Community Association is empowered to take any action or do any act, which may at any time be deemed to require the act of an Owner or Community Association Member, the Owners and Community Association Members and each of them hereby constitute and appoint the Community Association as their attorney-in-fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging, and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of a Community Association, or by the acceptance of a deed for a Lot, or by signing a contract for purchase of a Lot, or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner and Community Association Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

ARTICLE XV

Rights and Obligations

Each grantee of the Developer, of Thierer, 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 Community Association, and the heirs, successors, and assigns of the foregoing Persons, accepts the same subject to all restrictions, conditions, covenants, reservations, liens, and charges, and the jurisdiction, rights, and powers created or 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.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed.

GRAND MERE DEVELOPMENT, INC.

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

THIERER CONSTRUCTION, INC.

By: Larry Thierer
Larry Thierer, President

ACKNOWLEDGMENTS

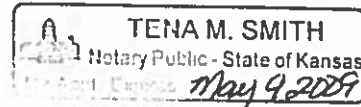
STATE OF KANSAS, COUNTY OF RILEY, ss.

On this 20 day of February, 2006, before me, a Notary Public, personally appeared Mary L. Vanier, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed, and the said Mary Vanier further declared that she is the President of Grand Mere Development, Inc, and the execution thereof was authorized on behalf of the corporation.

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

Tena M. Smith
Notary Public

My Appointment Expires: May 9 2009



STATE OF KANSAS, COUNTY OF RILEY, ss.

On this 1 day of March, 2006, before me, a Notary Public, personally appeared Larry Thierer, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed, and the said. Larry Thierer further declared that he is the President of Thierer Construction, Inc., and the execution thereof was authorized on behalf of the corporation.

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

Sherie L. Taylor
Notary Public

My Appointment Expires:

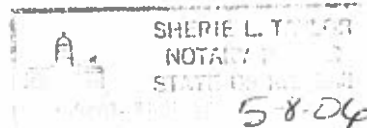


EXHIBIT A
LAND BOUNDARY DESCRIPTION
(Future Units of Grand Vista)

A tract of land in the North Half of the Northwest Quarter of Section 10, Township 10 South, Range 7 East of the 6th Principal Meridian in Riley County, Kansas described as follows:

Beginning at a point on the South line of said North Half of said Northwest Quarter that is North 89° 27' 48" East for a distance of 620.20 feet from the Southwest Corner of the North Half of the Northwest Quarter of said Section 10;

THENCE North 17° 05' 57" East for a distance of 599.10 feet to the Southwest Corner of Lot 5 in Grand Vista, Unit 1, an Addition to the City of Manhattan, Riley County, Kansas;

THENCE North 88° 45' 28" East for a distance of 366.60 feet along the South line of Lots 5 and 6 in said Grand Vista, Unit 1;

THENCE South 52° 02' 21" East for a distance of 50.12 feet along the Southwesterly line of Grand Vista Lane in said Grand Vista, Unit 1 to the Westerly Corner of Lot 8 in said Grand Vista, Unit 1;

THENCE South 54° 03' 23" East for a distance of 128.38 feet along the Southwesterly line of said Lot 8 to the Southerly Corner of said Lot 8;

THENCE South 26° 14' 53" West for a distance of 78.12 feet along the Westerly line of Tract A in said Grand Vista, Unit 1;

THENCE South 0° 00' 00" East for a distance of 140.00 feet along the Westerly line of said Tract A;

THENCE South 26° 14' 53" West for a distance of 289.24 feet along the Westerly line of said Tract A to a point on said South line of said North Half of said Northwest Quarter, said point being North 89° 27' 48" East for a distance of 1143.88 feet from the Southwest Corner of said North Half of said Northwest Quarter;

THENCE South 89° 27' 48" West for a distance of 523.68 feet along the South line of said North Half of said Northwest Quarter to the point of beginning.

Together with and subject to covenants, easements, and restrictions of record.

Said property contains 6.971 acres more or less.

EXHIBIT B
(GRAND VISTA UNIT ONE)
LEGAL DESCRIPTION

A tract of land in the North Half of the Northwest Quarter of Section 10, Township 10 South, Range 7 East of the 6th Principal Meridian in Riley County, Kansas described as follows:

Beginning at a point on the South line of the North Half of the Northwest Quarter that is North 89 ° 27 ' 48 " East for a distance of 1143.88 feet from the Southwest Corner of the North Half of the Northwest Quarter of said Section 10;

THENCE North 26 ° 14 ' 53 " East for a distance of 289.24 feet;
THENCE North 0 ° 00 ' 00 " West for a distance of 140.00 feet;
THENCE North 26 ° 14 ' 53 " East for a distance of 78.12 feet;
THENCE North 54 ° 03 ' 23 " West for a distance of 128.38 feet;
THENCE North 52 ° 02 ' 21 " West for a distance of 50.12 feet;
THENCE South 88 ° 45 ' 28 " West for a distance of 366.60 feet;
THENCE North 17 ° 05 ' 57 " East for a distance of 312.40 feet to a point on the South line of Grand Mere Parkway;

THENCE North 81 ° 47 ' 34 " East for a distance of 155.11 feet along the South line of said Grand Mere Parkway;

THENCE North 76 ° 01 ' 39 " East for a distance of 225.37 feet along the South line of said Grand Mere Parkway;

THENCE along a curve to the right having a radius of 245.00 feet and an arc length of 58.80 feet, being subtended by a chord of North 82 ° 54 ' 10 " East for a distance of 58.66 feet along the South line of said Grand Mere Parkway;

THENCE South 25 ° 15 ' 11 " East for a distance of 13.76 feet;

THENCE along a curve to the right having a radius of 595.00 feet and an arc length of 245.81 feet, being subtended by a chord of South 07 ° 27 ' 01 " West for a distance of 244.07 feet along the East line of a proposed street;

THENCE along a curve to the right having a radius of 258.45 feet and an arc length of 115.08 feet, being subtended by a chord of South 52 ° 56 ' 43 " East for a distance of 114.13 feet along the North line of a proposed building lot;

THENCE South 26 ° 14 ' 53 " West for a distance of 107.41 feet along the East line of proposed building lots;

THENCE South 09 ° 25 ' 05 " East for a distance of 390.98 feet;

THENCE South 53 ° 36 ' 07 " East for a distance of 237.03 feet to the South line of the North Half of the Northwest Quarter of said Section 10;

THENCE South 89 ° 27 ' 48 " West for a distance of 447.36 feet along the South line of the North Half of the Northwest Quarter of said Section 10 to the point of beginning.

Together with and subject to covenants, easements, and restrictions of record.

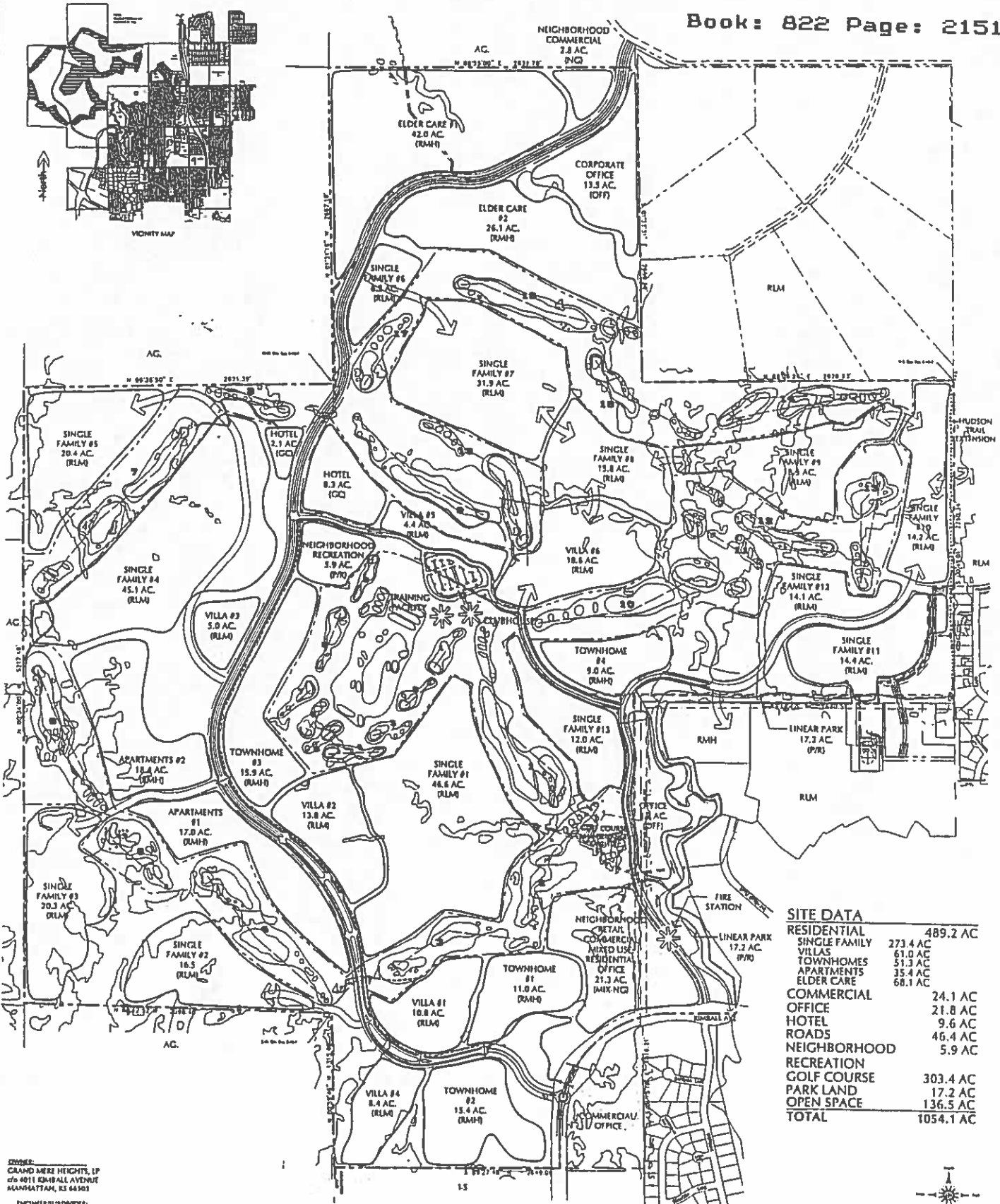
Said property contains 5.809 acres more or less.

GRAND MERE

Master Plan

EXHIBIT C

Book: 822 Page: 2151



| SITE DATA | |
|--------------------|-----------|
| RESIDENTIAL | 489.2 AC |
| SINGLE FAMILY | 273.4 AC |
| VILLAS | 61.0 AC |
| TOWNHOMES | 51.3 AC |
| APARTMENTS | 35.4 AC |
| ELDER CARE | 68.1 AC |
| COMMERCIAL | 24.1 AC |
| OFFICE | 21.8 AC |
| HOTEL | 9.6 AC |
| ROADS | 46.4 AC |
| NEIGHBORHOOD | 5.9 AC |
| RECREATION | |
| GOLF COURSE | 303.4 AC |
| PARK LAND | 17.2 AC |
| OPEN SPACE | 136.5 AC |
| TOTAL | 1054.1 AC |

OWNER:
GRAND MERE HEIGHTS, LP
c/o 4011 KIMBALL AVENUE
MANHATTAN, KS 66501

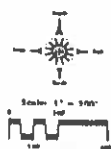
DESIGNER/ENGINEER:
SCHWABEATON, P.A.
1125 GARDEN WAY
MANHATTAN, KS 66502

PLANNING ARCHITECT:
COURTESY
2215 E. RANDOLPH MILL ROAD
SUITE 210
ARLINGTON, TX 76011

GRAND MERE HEIGHTS, L.P. DEVELOPER
GRAND MERE DEVELOPMENT, INC.
4011 KIMBALL AVE
MANHATTAN, KS 66501

CONSULTING DEVELOPER:
KANSAS STATE UNIVERSITY GOLF MANAGEMENT
AND RESEARCH FOUNDATION
C/O THE OFFICE OF THE VICE PRESIDENT
FOR INSTITUTIONAL ADVANCEMENT
122 ANDERSON HALL
KANSAS STATE UNIVERSITY
MANHATTAN, KS 66506-0119

EXISTING USE OF PROPERTY: AGRICULTURAL USE



JANUARY 17, 2000
HNTB

HNTB
ARCHITECTS
PLANNERS
ENGINEERS
LANDSCAPE ARCHITECTS
INTERIOR DESIGNERS
ENVIRONMENTAL DESIGNERS
CIVIL ENGINEERS
ELECTRICAL ENGINEERS
MECHANICAL ENGINEERS
CHEMICAL ENGINEERS
INDUSTRIAL ENGINEERS
TRANSPORTATION ENGINEERS
WATER RESOURCES ENGINEERS
GEOTECHNICAL ENGINEERS
METEOROLOGICAL ENGINEERS
NUCLEAR ENGINEERS
POLLUTION ENGINEERS
SAFETY ENGINEERS
SURVEYING ENGINEERS
THERMAL ENGINEERS
VEHICLE ENGINEERS
WIND ENGINEERS
WOOD ENGINEERS
ZONING ENGINEERS