

**AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS ESTATES OF GLENEAGLES SINGLE  
FAMILY RESIDENCE COMMUNITY**

This Amendment, made as of this 7 day of March, 2003, by Tomahawk Ridge Company, L.L.C., a Kansas limited liability company ("Developer").

WHEREAS, Developer is the fee simple owner of the following described real property, situated in the City of Overland Park, County of Johnson, State of Kansas, to-wit:

All of Lots 1 through 78, Tracts A-G, Estates of Gleneagles, First Plat, a subdivision of land in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

WHEREAS, pursuant to Declaration of Restrictions, recorded in the office of the Register of Deeds, Johnson County, Kansas, in Book 7540, Page 722, (the "Declaration"), Developer imposed upon the Subdivision certain restrictions governing the development and use of said property; and

WHEREAS, Developer reserved in Article XIII, of the Declaration the right to alter, amend, remove, or add to the Restrictions by filing amended copies of record in the office of the Register of Deeds, Johnson County, Kansas; and

WHEREAS, Developer desires to amend said Declaration in accordance with the provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises said Declaration is hereby amended in the following manner:

1. Article IV, Creation of Lien and Personal Obligation, is hereby amended to read as follows:

Each Owner, by acceptance of a deed of 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 Developer'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

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PO Box 550  
Olathe, KS 66051

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 obligation 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 60 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. For the purposes of Section 4.2, the Community Association's fiscal year shall end on December 31 of each calendar year.

(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 of 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 Initiation Fee. An initiation fee of \$250.00 shall be payable by the new Lot Owner to the Homes Association, for use as part of the general funds of the Homes Association, upon each of the following events with respect to each Lot:

- (i) The initial occupancy of the residence on the Lot after the residence is constructed (which initiation fee for this event shall be collected by the Developer from the new Lot Owner and paid over to the Homes Association); and
- (ii) Each transfer of ownership of the Lot for value.

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.

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, or the Developer is not properly exercising its duties and powers as provided in this Declaration or documentation association 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 or any member thereof shall have any liability to the Community Association or any Owner, Community Association Member, if such reserves prove to be inadequate. The Board, at its discretion, may use reserve funds for other purposes than capital expenditures.

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 attorneys' 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 Mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments which accrued prior to the date the First Mortgagee 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, not 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. The Community Association may charge a lien fee of \$150.00.

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 Article 4.11, or the provisions of this Section 4.13) 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.

2. Article VII, Architectural and Landscape Control, is hereby amended to read as follows:

7.1 Design Review Committee. The Community Association shall have a Design Review Committee consisting of not less than two nor more than five 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 (i) 95% of all Lots in the Community as it exists from time to time have been sold to third parties and (ii) Developer shall own less than two acres of land in the Community as it may exist from time to time. 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. 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 Standards. In order to achieve uniformity and coordination within the Community, Design Standards therefore are hereby established as set forth in Section 7.3. 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 Johnson County, Kansas.

7.3 The Design Standards.

(a) Street Obstructions. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways will be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street lines extended. The same sight line limitations will apply on any Lot within 10 feet of the intersection of a street property line with the edge

of a driveway or alley pavement. No tree will be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to prevent obstruction of such sight lines.

(b) Landscape. The general approach to landscape design in the Community is based on:

- (i) landscape conservation; and
- (ii) uniformity in design appearance.

In furtherance thereof:

(1) Appropriate construction procedures shall be followed to protect and preserve trees, shrubs and other landscaping which may exist on the construction site or on adjacent or nearby sites. Good examples of mature vegetation should, whenever practical, be saved to give the Community an established feeling. Stockpiling of any building materials, cutting, filling or any ground disturbances shall not be allowed within the drip line of existing trees which are to remain. Runoff and erosion shall be controlled on site during construction while the site is disturbed. All disturbed ground areas of a building site shall be sodded, covered with plants or mulched with approved landscape materials. Landscape improvements as approved by the Design Review Committee shall be installed within sixty (60) days after completion of the residences provided, however, said 60-day period shall be subject to reasonable extension on account of inclement weather.

(2) Property lines shall not be obviously delineated at the street or on the boundary of any Lot. No structure, wall, fence, or any other separating device along a property line will be permitted beyond the building lines therefore established from time to time by the Design Review Committee.

(3) Plantings for Lots shall reinforce the natural meadow and woodland character of the Community. Cleared areas should be landscaped with trees, shrubs and lawns designed to compliment the architectural character of proposed buildings in form, location and scale. Plants shall be of advanced maturity and of the highest quality.

(4) An irrigation system of design approved by the Design Review Committee shall be installed to maintain all planted areas including grass areas.

(c) Hard Surfaces. All paved surfaces shall be of high quality finish such as asphalt, brick, concrete or other permanent material approved by the Design

**Review Committee. A maximum of 50% hard surface materials will be allowed within the front yard areas on any Lot.**

**(d) Construction Period Requirements. During the period that construction is being undertaken on a Lot, the following minimum measures will be required to minimize disturbance to adjacent sites:**

- (1) Temporary lighting shall follow standards for permanent lighting as described in this Declaration.**
- (2) No dumping of construction materials, waste or trash shall occur in the Community.**
- (3) Each Lot shall be maintained in a clean and orderly manner during construction. Erosion shall be controlled on each Lot in a manner approved by the Design Review Committee while it is in a disturbed condition.**

**(e) Residence Design.**

- (1) Colors, materials, finishes and building forms shall be in conformity with the requirements hereof and integrated with the particular landscape and topographical character of each site.**
- (2) The site dimensions must be adequate to accommodate the proposed improvements, including the house, parking, drives and screening.**
- (3) Finished grades and elevations must be compatible with neighboring sites, particularly with regard to drainage and views.**
- (4) The design of each residence shall be subject to the approval of the Design Review Committee and, without limiting the foregoing, shall comply with the following criteria: (i) appropriateness of form, color and materials to design style; (ii) relationship of window to wall and wall to total form (well-designed massing); (iii) appropriateness of detailing to form, style and massing; and (iv) the proportions of roofs shall be consistent with the proposed architectural style.**
- (5) No turbines or solar panels shall be permitted which can be seen from any street.**

**(f) Exterior Materials and Colors. Residences shall be faced on all sides with quality materials (such as brick, wood, stone or stucco) as approved by the Design Review Committee. Exposed standard concrete block, prefabricated metal buildings, simulated brick, stone, or batt and board will not be allowed.**



Prefabricated metal buildings are not allowed. All exterior materials and the color of all exterior materials shall be approved by the Design Review Committee.

Window frames other than wood shall be either anodized or electrostatically painted. No unpainted aluminum will be permitted for window framing. Wood frames shall be painted, sealed, stained or have another coating approved by the Design Review Committee.

Exposed foundations and all vertical surfaces of decks and handrails shall be painted and those foundations exceeding twelve inches (12") shall be covered with the same quality face material as the residence.

(g) Garages. Each residence must have a private, attached fully enclosed side-entry garage for not less than two or more than four vehicles, unless the Design Review Committee shall consent to a greater number provided, however if the size or configuration of the Lot shall not reasonably permit a side-entry garage, the Design Review Committee may (but shall not be obligated to) approve a rear or front-entry garage. The interior walls of all garages must be finished with quality materials. Garages shall have the same architectural treatment and be constructed of the same materials as the house proper. No garage may be left open to the public street for an extended period of time. No garage will be permitted to be enclosed for living or used for purposes other than storage of automobiles and related normal uses. Lot numbers 6 – 35 may front load garages.

(h) Construction, Location, and Size Limitations.

(1) No exterior alterations of any existing building may be permitted without the prior approval of the Design Review Committee. No second-story additions are permitted. No additional windows, platforms, etc. which may invade the privacy of adjacent dwellings are permitted.

(2) No excavation will be made except in conjunction with construction of an improvement. When such improvement is completed, all exposed openings will be back filled and graded.

(3) Once commenced, construction will be diligently pursued to completion and it may not be left in a partly finished condition for more than 30 days without written approval from the Design Review Committee.

(4) Residences destroyed by fire or other casualty shall be demolished and removed from the Lot and new construction begun within three months after the date of such destruction, and thereafter such construction shall be performed with due diligence through completion.

(5) Minimum square footage requirements for residences shall be established by the Developer for each Lot within each Plat of the Community. With respect to the Lots within the Plat entitled Estates of Gleneagles, First Plat, recorded October 5, 2000, as Document No. 3167614 in Plat Book 118, Page 33, the requirements are as follows:

Lots Numbered 6 – 35

- (i) 2-story residence – 3,000 square feet with at least 1,500 square feet on the first floor.
- (ii) 1-1/2 story – 2,800 square feet with at least 2,000 square feet on the first floor; and
- (iii) 1-story – 2,600 square feet. The lower level (basement area including any so-called “walk-out basement”) and garage shall be disregarded to compute such square footage.

Lots Numbered 1 – 5 and 36 – 78

- (i) 2-story residence – 3,500 square feet with at least 1,800 square feet on the first floor;
  - (ii) 1-1/2 story – 3,000 square feet with at least 2,500 square feet on the first floor; and
  - (iii) 1 story – 3,000 square feet. The lower level (basement area, including any so-called “walk-out basement”) and garage shall be disregarded to compute such square footage.
- (6) All residences and other improvements shall be located on each Lot as approved by the Design Review Committee and in full compliance with any setback lines or restrictions shown on the applicable Plat.

(i) HVAC. No window or wall air conditioning or heating units will be permitted.

(j) Patios. No screening of a patio or other recreation area will be installed without the written approval of the Design Review Committee.

(k) Swimming Pools, Hot Tubs and Tennis Courts. All pool areas, hot tub areas, tennis courts, equipment associated therewith and screening therefore must be approved by the Design Review Committee. No tennis courts shall be lighted. No lighting of a pool, hot tub or other recreation area (other than tennis courts) shall be installed without the prior written approval of the Design Review

Committee, and if allowed shall be designed for recreational character so as to buffer the surrounding residences from all lighting.

(1) **Fences and Walls.** Wrought iron fences no greater than five feet in height may be permitted. All fencing and walls (including, without limitation, the composition and location thereof) shall be subject to the approval of the Design Review Committee. Only wrought iron fences, with iron, stone or brick pillars, are permitted. Privacy screens or other material may be permitted by the Design Review Committee 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. No chain link, wire, wood panel or stockade fencing shall be permitted. Retaining walls shall be made of natural materials approved by the Design Review Committee.

#### 7.4 **Review Process.**

(a) Signed plan approval by the Design Review Committee is 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 should 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. One copy shall be retained for the Design Review Committee for its files and two copies returned to the Owner for Owner's use in obtaining City approval (i.e., building permits). The review of each submission by the Design Review Committee will be carried out within twenty (20) working days from the date of each submission; and notification of recommendations or approval will be provided in writing to the Owner at that time. Prior to Stage 1 (as set forth below in Section 8.4(b)), it is required that each Owner or owner's architect and building (if the Owner is not the builder) attend a pre-design conference with a member of the Design Review Committee to review the intent of the Owner's proposed design.

(1) The review process shall be accomplished in the following three stages:

**Stage I.** Schematic/Preliminary Design

**Stage II.** Construction Documents

**Stage III.** Certificate of Compliance

(2) The Stage I Schematic/Preliminary Design review will focus on architectural treatment and rooflines and compliance with the other Design Standards. Schematic/Preliminary Building Design documentation will

include: Site plans, floor plans, square footage, elevations, perspective rendering (optional), building materials (optional but recommended at this stage) and window type. The Schematic/Preliminary documents will include at least the following: Site location plan; grades, existing and proposed, including finished floor elevation; site survey, including existing trees 4" caliper and above; building location, overall dimensions and height; and setbacks.

(3) The Stage II construction documents review will focus on final working drawings and specifications, site and building materials (including type and color), cornice/facia details, buffers, screens, landscape areas (existing and proposed, noting trees to be removed), site lighting concepts, and site drainage. Revisions to design elements occurring after construction documents are approved will be subject to review and approval by the Design Review Committee. Review of each design change submission will be carried out as soon as reasonably possible. All construction documents shall be of professional quality and prepared in accordance with criteria established by the Design Review Committee.

(4) In the Stage III Certificate of Compliance segment, a Certificate of Compliance shall be issued to an Owner by the Design Review Committee upon completion of construction in accordance with the terms hereof. The Certificate of Compliance shall state to the Owner that the requirements of the Design Standards have been met.

At the time an Owner desires to apply for a Certificate of Compliance, he will complete a checklist of compliance items and forward it to the Design Review Committee. This should be at the same point that application is made for a use and occupancy permit from the City. The completed checklist, signed by the Owner, will state compliance with the major items listed below, pursuant to the plans approved by the Design Review Committee.

The following items will be covered by the Certificate of Compliance: (i) the building is located according to approved site plan; (ii) site improvements including paving, walls, walks, tree preservation and planting have been provided in accordance with the approved plans; (iii) building is of approved architectural design and approved materials and color; and (iv) approved lighting has been installed.

**7.5 Interpretation and Waiver.** The Design Review Committee's interest in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. When questions of judgment or interpretation arise, an Owner may appeal a decision of the Design Review Committee to the Developer if Developer is responsible for the appointment of the members of the Design Review Committee, but in

such instance the decision shall be final. 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.

**7.6 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 Committees 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 therefore 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 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 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 estoppels certificate pursuant to Section 7.6(f) 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 60 days) of a request therefore from any Owner as to his 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. If such inspection reveals that the improvements located on such Lot have been completed in compliance with the plans and specifications as approved by the Design Review Committee, the Design Standards and the other provisions hereof, the Design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when recorded, shall be conclusive evidence of compliance with the provisions of the approved plans and specifications and the Design Standards as to the improvements described in such recorded notice, but as to such improvements only.

(g) The Community Association may promulgate such rules and regulations as it deems to be appropriate in order to enforce compliance with the Design Standards set forth herein. **WITHOUT LIMITING THE GENERALITY OF THE PROCEEDING SENTENCE, THE 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.**

7.7. **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 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.

3. Article VIII, **Use and Occupancy Restrictions,** shall be amended to read as follows:

The use and occupancy restrictions hereinafter set forth in this Article VIII are hereby established in the Community.

8.1 **Residential Use.** Each Lot within the Community may be used only for residential purposes and no other. 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 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 or temporary sign of any kind shall be displayed to the public view, or from any Lot, without the approval of the Community Association or the 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 Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs advertising the Lot as being for sale; or (d) signs promoting political candidates but only 30 days before and five days after the day of election. Permitted Signs shall not exceed five square feet in total area or be more than three feet in height.

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. All such domestic pets must be registered with the Community Association and shall have proof of proper immunization presented with said registration.

**8.4 Nuisances.** No Owner shall permit or suffer anything to be done or kept about or within his 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 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, motorhomes, 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, floodlights, landscape lighting or other lighting shall be place or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots. All exterior lighting shall have a concealed energy source and a white color within the range of 2700° to 4500° KK. Golden, yellow, blue or reddish colors are not permitted. No exterior lighting shall be installed or maintained on any Lot if the Design Review Committee shall object thereto. Holiday lighting will be allowed only from November 15 to January 31 of any given year.

**8.7 Antennas.** No "satellite dish" larger than 2 feet in diameter shall be placed or maintained outside of (or otherwise be visible from the exterior of) the residence on any Lot and no other external radio, television or other antennas of any kind or nature or other device 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. All such antennas or other devices shall be completely screened from view outside the Lot.

**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. Trash shall be placed in such designated locations and containers as may be established from time to time in the Design Standards.



- 8.15 Outbuildings Prohibited. No building or other detached structure may be erected on any Lot without the consent of the Design Review Committee.
- 8.16 Above-Ground Swimming Pools. No above-ground swimming pools shall be allowed on any Lot.
- 8.17 Hot Tubs. All hot tub design and placement are subject to Design Committee review and approval.
- 8.18 Swimming Pool Equipment. All swimming pool equipment and related items must be properly screened using appropriate shrubbery and/or walls. Screening must be approved by the Design Review Committee.
- 8.19 Storage Tanks. No exterior storage tank for fuel or anything else shall be allowed on any Lot.
- 8.20 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.
- 8.21 Rental of Lots. An Owner who leases his 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 lessee thereof.
- 8.22 Solar Panels. Solar panels shall not be erected without the prior written consent of the Design Review Committee.
- 8.23 Lawn Ornamentation. No lawn ornaments of any kind are permitted in yards visible from any street.
- 8.24 Vegetable Gardens. Vegetable gardens shall be limited in size to 100 square feet.
- 8.25 Flag Poles No flag poles detached from the house shall be allowed on any Lot.
- 8.26 Dog Runs/Houses. No dog runs or dog houses shall be allowed on any Lot.
- 8.27 Outdoor Storage. No outdoor storage or storage under decks shall be allowed on any Lot.
- 8.28 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.

8.29 Modification. The Community Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Community and the Lots by reasonable rules and regulations of general application within the Community adopted by the Community Association Board from time to time which shall be incorporated into the Community Association Rules.

4. The Declaration as herein amended shall remain in full force and effect in accordance with its terms and shall run with the land as herein provided.

IN WITNESS WHEREOF, the undersigned has executed this Amendment to Declaration of Restrictions as of the date first above written.

TOMAHAWK RIDGE COMPANY, L.L.C.,  
a Kansas limited liability company

  
Matthew M. Adam, Member

\$4200  
\$3800  
STATE OF KANSAS ]  
COUNTY OF JOHNSON ] ss.  
FILED FOR RECORD  
2003 MAR 13 A 9:39


**ACKNOWLEDGMENT**

REBECCA L. DAVIS  
REGISTER OF DEEDS

STATE OF KANSAS        )  
                                  ) SS:  
COUNTY OF JOHNSON    )

**BE IT REMEMBERED**, that on this 7 day of March, 2003, before me the undersigned, a Notary Public in and for said County and State, came Matthew M. Adam, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

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

My Commission Expires: 2/11/2007

