

This instrument filed by  
Sec. Land Title Company  
Norm

3049000

STATE OF KANSAS ] ss  
COUNTY OF JOHNSON ]  
FILED FOR RECORD

BROOKHIGHLAND  
DECLARATION OF RESTRICTIONS

1999 OCT -8 P 4:20 5

SASA FULLMANN  
REGISTER OF DEEDS

THIS DECLARATION is made as of the 5 day of October, 1999, by BrookWood Development Company, L.C., a Kansas limited liability company (the "Developer").

WITNESSETH:

WHEREAS, the Developer has executed and filed with the Register of Deeds of Johnson County, Kansas a plat of the subdivision known as "BrookHighland"; and

WHEREAS, such plat creates the subdivision of BrookHighland, composed, in part, of the following described lots and tracts, to-wit:

All of Lots 1 through 43 and Tracts A, B, C and D,  
BROOKHIGHLAND, a subdivision of land in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

WHEREAS, the Developer, as the present owner and developer of the above-described lots, desires to place certain restrictions on such lots to preserve and enhance the value, desirability and attractiveness of the development and improvements constructed thereon and to keep the use thereof consistent with the intent of the Developer, and all of said restrictions shall be for the use and benefit of the Developer and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises contained herein, the Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the above-described lots shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth.

I. Definitions. For purposes of this Declaration, the following definitions shall apply:

(a) "Lot" means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then such adjacent property under common ownership shall be deemed to constitute only one "Lot".

(b) "Subdivision" means all of the above-described lots in BrookHighland, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(c) "District" means all of the property, including the above-described lots and all Common Areas, which from time to time are subject to the BrookWood Area Homes



Association Declaration, as amended and supplemented, from time to time, relating to the Homes Association.

(d) "Developer" means BrookWood Development Company, L.C., a Kansas limited liability company, and its successors and assigns.

(e) "Owner" means the record owner(s) of title to any Lot, including the Developer, and for purposes for all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner, and all of their guests and invitees.

(f) "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, in the District, (ii) all landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all owners within the District, (iii) the Green Areas, and (iv) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the owners within the District, whether or not any "Common Area" is located on any Lot.

(g) "Green Areas" means all areas that may be platted in the District as a tract and not as a residential lot.

(h) "Homes Association" means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision and other nearby subdivisions.

(i) "Exterior Structure" means any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse, outbuilding, fence, patio wall, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, pond, basketball goal, flag pole, swingset, trampoline, sand box, playhouse, treehouse, batting cage or other recreational or play structure, and all exterior sculptures, statuary, fountains, and similar yard decor.

(j) "Subdivision Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all or, at the Developer's discretion, substantially all of the Lots in the Subdivision (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Subdivision Certificate of Substantial Completion or similar instrument in lieu thereof in its absolute discretion at any time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.



(k) "Approving Party" means (i) prior to the recording of the Subdivision Certificate of Substantial Completion, the Developer (or its designees from time to time) and (ii) subsequent to the recording of the Subdivision Certificate of Substantial Completion, the Homes Association (or with respect to Exterior Structures and other matters assigned to it, the Architectural Committee).

(l) "Board" means the Board of Directors of the Homes Association.

(m) "Architectural Committee" means: (i) prior to the Turnover Date, the Developer (or its designees from time to time); and (ii) on and after the Turnover Date, a committee comprised of at least five members of the Homes Association (at least one of whom resides in the Subdivision), all of whom shall be appointed by and serve at the pleasure of the Board (subject to the term limitations and other provisions of Section 14 below).

(n) "City" means the City of Overland Park, Kansas.

(o) "Turnover Date" means the earlier of: (i) the date as of which 90% of all of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date under this Declaration.

2. Use of Land. Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied for other than single family, private residential purposes. No trailer, outbuilding or Exterior Structure shall at any time be used for human habitation, temporarily or permanently; nor shall any residence of a temporary character be erected, moved onto or maintained upon any of the Lots or any Common Areas or used for human habitation; provided, however, that nothing herein shall prevent the Developer or others (including, without limitation, builders and real estate brokerage companies) authorized by the Developer from using temporary buildings or structures or any residence or clubhouse for model, office, sales or storage purposes during the development and build out of the District.

### 3. Building Material Requirements.

(a) Exterior walls of all residences and all appurtenances thereto shall be of stucco, brick, stone, wood shingles, lap siding, plate glass, glass blocks, or any combination thereof. Except as specifically approved in writing by the Developer, no front walls of a residence (as determined by the Developer) shall be covered with materials commonly known as sheet goods that when installed have uncovered seams or seams covered with batts, such as, without limitation, 4 feet by 8 feet panels. All windows and exterior doors shall be constructed of glass, wood, metal or vinyl, or any combination thereof. No windows or exterior doors may be silver or other bright finish. Roofs shall be covered with pre-colored concrete tiles (in colors approved by the Developer), wood shingles, wood shakes or with the specific written approval of the Developer in its absolute discretion, comparable-looking materials. Notwithstanding the foregoing provisions of this Section 3 requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for



dwelling construction of comparable quality and style in the area, as determined by the Developer in its absolute discretion, shall be acceptable upon written approval by the Developer in its absolute discretion.

(b) All applicable exterior components (excluding roofs, brick, stone, stucco and similar components) shall be covered with a workmanlike finish of two coats of high quality paint (which may include a primer coat) or stain. No residence or Exterior Structure shall stand with its exterior in any unfinished condition for longer than five months after commencement of construction. All exterior basement foundations and walls which are exposed in excess of 12 inches above final grade shall be painted the same color as the residence or covered with siding compatible with the structure.

(c) No air conditioning apparatus or unsightly projection shall be attached or affixed to the front of any residence.

(d) Chimneys on exterior walls may not be cantilevered and must have a foundation wall underneath. No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue (other than a minimal amount of exterior metal or piping from a direct vent fireplace). All fireplace flues shall be capped with a black or color-conforming metal rain cap.

(e) Except as otherwise permitted by the Developer in writing, all residences shall have a house number plate in the style(s) approved by the Developer, which plate shall be located adjacent to the front door or, where not practical, at another location approved by the Developer.

(f) All driveways and sidewalks shall be concrete, patterned concrete, bomanite, interlocking pavers, brick or other permanent stone finishes. Crushed gravel, asphalt and natural driveways and sidewalks are prohibited.

(g) All residences shall have at least a two-car garage. No car ports are permitted.

4. Minimum Floor Area. No residence shall be constructed upon any Lot unless it has a total finished floor area of at least: 1,900 square feet on the first floor for a ranch style residence (excluding a so called reverse one and one-half story), 2,550 square feet for a reverse one and one-half story with at least 1,650 square feet on the first floor, 2,900 square feet for a two story residence with at least 1,400 square feet on the first floor, and 2,650 square feet for a one and one-half story residence with at least 1,650 square feet on the first floor. A "reverse one and one-half story" is a ranch style residence with a basement finished comparable in quality to the first floor with at least one bedroom and bathroom in the basement. Finished floor area shall exclude any finished attics, garages, basements (other than in a reverse one and one-half story residence) and similar habitable areas. The Developer, in its absolute discretion, may allow variances from the minimum square footage requirement.



5. Approval of Plans: Post-Construction Changes: Grading, Retention Lines.

(a) Notwithstanding compliance with the provisions of Sections 3 and 4 above, no residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, exterior materials, location, elevations, plot plan, lot grading plan, general landscaping plan, and exterior color scheme have been submitted to and approved in writing by the Developer or, in the case of Exterior Structures to the extent provided in Section 8 below, the Architectural Committee. No change or alteration in such building plans, specifications, exterior materials, location, elevations, plot plan, lot grading plan, general landscaping plan or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the Developer or the Architectural Committee, as the case may be. All building plans and plot plans shall be designed to minimize the removal of existing trees and shall designate those trees to be removed.

(b) Following the completion of construction of any residence or Exterior Structure, no significant landscaping change, significant exterior color change or exterior addition or alteration shall be made thereto unless and until the change, addition or alteration has been submitted to and approved in writing by the Architectural Committee. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Architectural Committee.

(c) All final grading of each Lot shall be in accordance with the master grading plan approved by the City, any related grading plan furnished by the Developer for the development phase containing the Lot and any specific site grading plan for the Lot approved by the Developer. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. Water from sump pumps shall be drained away from adjacent residences (actual and future). No changes in the final grading of any Lot shall be made without the prior written approval of the Approving Party and, if necessary, the City. The Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master grading plan or any approved lot grading plan or for the Developer not requiring a lot grading plan and compliance therewith or for the quality or composition of any soil. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots that the Developer may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.

(d) By acceptance of a deed to a Lot, all Owners acknowledge that there are above-ground high voltage electric transmission lines located in or near the Subdivision. Each Owner accepts all health, safety and other risks association therewith. The Developer shall have no liability or responsibility to any Owner or other party with respect to such electrical lines.



6. Set Backs. No residence, or any part thereof (exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections), or Exterior Structure, or any part thereof, shall be nearer the street line than the building set back lines shown on the recorded plat for such Lot; provided, however, that the Approving Party shall have the right to decrease, from time to time and in its absolute discretion, the set back lines for a specific Lot, to the extent they are greater than the minimum set backs required by the City, by filing an appropriate instrument in writing in the office of the Register of Deeds of Johnson County, Kansas.

7. Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Developer in writing, construction of the residence on a Lot shall be commenced within six months following the date of delivery of a deed from the Developer to the purchaser of such Lot and shall be completed within six months after such commencement. In the event such construction is not commenced within such six month period (or extension thereof, if any), the Developer shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Lot from such purchaser at its original sale price. If such repurchase right is exercised by the Developer, the Owner of the Lot in violation of this construction commencement provision shall not be entitled to reimbursement for taxes, interest or other expenses paid or incurred by or for such Owner.

8. Exterior Structures.

(a) No Exterior Structure shall be created upon, moved onto or maintained upon any Lot except (i) strictly in accordance with and pursuant to the prior written approval of the Architectural Committee as to the applicable building plans, specifications, exterior materials, location, elevations, lot grading plans, landscaping plans and exterior color scheme and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below or elsewhere in this Declaration; provided, however, that the approval of the Architectural Committee shall not be required for (i) any Exterior Structure erected by or at the request of the Developer or (ii) any Exterior Structure that (A) has been specifically approved by the Developer prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the Developer and (B) has been built in accordance with such approved plans.

(b)

(i) Only wrought-iron (or similar) fences in the specific styles and colors approved by the Developer shall be allowed on the following Lots: 1, 2, 3, 8, 9, 10, 11, 12, 17, 18, 34 and 43. Other Lots in the Subdivision not listed in the preceding sentence may have only wood or wrought iron (or similar) fences or privacy screens in the specific styles and colors approved by the Developer. Fences and boundary walls shall not interfere with drainage. No chain-link or similar fence shall be permitted. Unless and until otherwise specifically approved in writing by the Developer, (A) no fence, boundary wall or privacy screen shall exceed five feet in height, (B) no fence, boundary wall or privacy screen shall be constructed or maintained on any Lot nearer to the street than the rear corner (as defined by the Approving Party) of the residence, (C) no fence shall be constructed or maintained on any Lot more than one foot from the property line of the Lot, except to the extent



necessary for such fence to abut the residence, and (D) all fences must be joined to any previously existing fences on adjacent Lots.

(ii) All basketball goals shall be permanently installed, free standing and not attached to the residence unless the Architectural Committee determines that there are compelling reasons for the basketball goal to be attached to the residence. All backboards shall be transparent or painted white and all poles shall be a neutral color. There shall be only one basketball goal per Lot. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

(iii) Except where specifically authorized by the Developer or the Architectural Committee in writing, all recreational or play structures (other than basketball goals) shall be made of materials approved in writing by the Approving Party and shall be located behind the back building line of the residence.

(iv) No above-ground type swimming pools shall be permitted. All pools shall be fenced and all hot tubs shall be fenced or otherwise adequately screened, all in accordance with the other provisions of the Declaration. All pools and hot tubs shall be kept clean and maintained in operable condition at all times.

(v) The following Exterior Structures shall be prohibited: animal runs, trampolines, portable basketball goals, tennis courts, paddle tennis courts, tree houses, batting cages, detached greenhouses and other detached outbuildings.

(vi) All outside animal houses shall be located in the back yard near the residence, shall be painted (where appropriate) the same color of the residence, and shall have roofs that are compatible with the residence.

(vii) No Exterior Structure that is prohibited under Section 9 below shall be permitted under this Section 8.

(c) No fence, boundary wall or other Exterior Structure installed by or for the Approving Party anywhere in the District may be removed or altered by any Owner or other person without the prior written consent of the Approving Party.

9. Buildings or Uses Other Than for Residential Purposes; Noxious Activities; Miscellaneous.

(a) Except as otherwise provided in Section 2 above, no residence or Exterior Structure, or any portion thereof, shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with the applicable ordinances of the City.

(b) No noxious or offensive activity shall be carried on with respect to any Lot; nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or



Common Area; nor shall anything be done which may be or become an annoyance or a nuisance to the District, or any part thereof. Each Owner shall properly maintain his Lot in a neat, clean and orderly fashion. All residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

(c) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(d) Overnight parking of motor vehicles of any type or character in public streets, Common Areas or vacant lots is prohibited. Motor vehicles shall be parked overnight in garages or on paved driveways only.

(e) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for its specific purpose for which it is designed.

(f) Recreational motor vehicles of any type or character are prohibited except:

(i) Storing in an enclosed garage;

(ii) Temporary parking for the purpose of loading and unloading (maximum of one overnight every 14 days); or

(iii) With prior written approval of the Approving Party.

(g) Except as provided in subsection (f) above, no vehicle (other than an operable passenger automobile, passenger van or small truck), commercial truck, bus, boat, trailer, camper, mobile home or similar apparatus shall be left or stored overnight on any Lot, except in an enclosed garage.

(h) No television, radio, citizens' band, short wave or other antenna, satellite dish (other than as provided below), solar panel, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or Exterior Structure or erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable under any Federal statute or because it violates the First Amendment or any other provision of the United States Constitution, the Architectural Committee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes may be installed with the prior written consent of the Approving Party, so as not to be readily visible from the street. The Approving Party shall have the right to establish rules and regulations binding upon all of the Lots and specific requirements for each Lot, regarding the location, size, landscaping and other aesthetic aspects of such small satellite dishes so as to control the impact thereof on the Subdivision, and all parts thereof.



(i) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.

(j) No lights or other illumination (other than street lights) shall be higher than the residence. Exterior holiday lights shall be permitted only between November 15 and January 15. Except for such holiday lights, all exterior lighting shall be white and not colored.

(k) No garage sales, sample sales or similar activities shall be held within the Subdivision without the prior written consent of the Homes Association.

(l) No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except intercoms, devices used exclusively for security purposes, and stereo speakers used in accordance with rules specified by the Board.

(m) All residential service utilities shall be underground, except with the approval of the Developer.

(n) In the event of vandalism, fire, windstorm or other damage to residence or Exterior Structure shall be permitted by the Owner to remain in damaged condition for longer than three months.

(o) No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any Lot. Storage shall be permitted under a deck provided such area is screened as otherwise authorized herein.

(p) No outside or underground fuel storage tanks of any kind shall be permitted.

(q) No driveway shall be constructed in a manner as to permit access to a street across a rear lot line.

(r) Except for signs erected by or for the Developer or its approved real estate brokerage company for the Subdivision, no sign, advertisement or billboard may be erected or maintained on any Lot except that:

(i) One sign not more than three feet high or three feet wide, not to exceed a total of six square feet, may be maintained offering the residence for sale. For newly constructed homes offered for sale, only a real estate brokerage company sign (which may include a rider identifying the builder), and not a separate sign for the builder, may be used if a real estate brokerage company is involved.

(ii) One garage sale sign not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted on the Lot when the sale is being held, provided such signs are removed within 24 hours after the close of the sale.



(iii) One political sign per candidate or issue not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election.

No signs offering a residence for rent or lease shall be allowed in the Subdivision.

(s) No sign shall be placed or maintained in any Common Area without the approval of the Approving Party.

(t) No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection and except for grass bags placed in the back yard pending regularly scheduled trash collection.

(u) Garage doors shall remain closed at all times except when necessary.

10. Animals. No animals of any kind shall be raised, bred, kept or maintained on any Lot except that dogs, cats and other common household pets may be raised, bred, kept or maintained so long as (a) they are not raised, bred, kept or maintained for commercial purposes, (b) they do not constitute a nuisance and (c) the City ordinances and other applicable laws are satisfied. All pets shall be confined to the Lot of the Owner except when on a leash controlled by a responsible person. Owners shall immediately clean up after their pets on all streets, Common Areas and Lots owned by others.

11. Lawns, Landscaping and Gardens. Prior to occupancy, all lawns, including all areas between each residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, beam, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter, provided, however, that the Owner of a Lot may leave or subsequently create a portion of the Lot as a natural area with the express written permission of the Approving Party. No lawn shall be planted with zoysia or buffalo grass. Prior to occupancy, the Owner thereof shall landscape the Lot to the same standards that generally prevail throughout the Subdivision (which shall include a minimum expenditure of \$2,500.00 on foundation plantings in the front yard plus at least two hardwood trees of two inch or more caliper in the front yard (in addition to any trees planted by the Developer)) and in accordance with the plans approved by the Developer.

The following Lots shall have a sprinkler system installed prior to occupancy covering the entire front, rear and side yards of the Lot: 1, 8, 9, 10, 11, 12, 17, 18, 24, 35, 36, 37, 38, 39, 40, 41, 42 and 43. Each such Owner shall use the sprinkler system as necessary or appropriate (as determined by the Approving Party) during the late spring, summer and early fall months. No Owner shall water the Lot such that there is significant runoff onto any adjacent Lot or Common Area.



To the extent any of the foregoing items are not completed prior to occupancy, the Owner shall escrow funds, in an amount and manner determined by the Developer, to assure such installation when weather permits.

All vegetable gardens shall be located behind the rear corners of the residence and at least five feet away from the boundary of the Lot. No vegetable garden(s) shall exceed 100 square feet in size on any Lot, except with the prior written consent of the Approving Party.

The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four inches.

The Developer shall have the right (but not the obligation) to install one or more trees on each Lot. The type of tree(s) and location shall be selected by the Developer in its absolute discretion. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot (including any trees planted by or for the Developer, but excluding those in a Common Area maintained by the Homes Association).

12. Easements for Public Utilities; Drainage; Maintenance. The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on any recorded plat of the District or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners and the Homes Association as a cross easement for utility line or service maintenance.

The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through all unimproved portions of each Lot in the District for the purpose of performing the powers and duties of the Homes Association and maintaining any Common Area. Any physical damage caused in the exercise of such easement right shall be repaired by and at the expense of the party exercising the easement right.

No water from any roof, downspout, basement or garage drain or surface drainage shall be placed in or connected to any sanitary sewer line.

### 13. Common Areas.

(a) The Developer and its successors, assigns, and grantees, the Owners, and the Homes Association shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended and permitted use of such Common Areas. Such right and easement in favor of the Owners shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.



(b) Any ownership by the Home Association of any Common Area and the right and easement of enjoyment of the Owners in the District as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, pipeline, maintenance, electric, telephone, television and other utility easements over, under, upon and through such Common Area, as provided in Section 12 above.

(c) No Owner shall improve, destroy or otherwise alter any Common Area without the express written consent of the Approving Party.

(d) Owners of Lots nearby the Green Areas shall prevent erosion and pollutant discharges and runoff onto the Green Areas.

(e) The following rules, regulations and restrictions shall apply to the use of the Green Areas:

(i) No automobiles or motorized vehicles of any kind shall be allowed in the Green Areas.

(ii) No refuse, trash, debris or pollutants shall be discarded or discharged in or about the Green Areas.

(iii) Access to the Green Areas shall be confined to designated common areas, except that owners of Lots adjacent to the Green Areas may have access to the area from their respective lots.

(f) Subject to the foregoing, the Developer and the Home Association shall have the right from time to time to make, alter, revoke and enforce additional rules, regulations and restrictions pertaining to the use of any Common Area.

#### 14. Architectural Committee

(a) No more than two members of the Board shall serve on the Architectural Committee at any time. The positions on the Architectural Committee may be divided by the Board into two classes with staggered two-year terms. No member of the Architectural Committee shall serve in such position for more than 48 months during any five year period. The provisions of this subsection (a) shall not apply until the Turnover Date. Until the Turnover Date, the Developer or its designees shall be the Architectural Committee.

(b) The Architectural Committee shall meet as necessary to consider applications with respect to any Exterior Structures that require the approval of the Architectural Committee as provided in Section 8 above and to consider any other matters within the authority of the Architectural Committee as provided in this Declaration. Any written application complete with appropriate drawings and other information that is not acted upon by the Architectural Committee within 35 days after the date on which it is filed shall be deemed to have been approved. A majority of the members of the Architectural Committee shall constitute a quorum for the transaction of business at a



meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Committee.

(c) At each meeting, the Architectural Committee shall consider and act upon written and complete applications that have been submitted to it for approval in accordance with this Declaration. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the individual members of the Architectural Committee determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. All decisions of the Architectural Committee shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Architectural Committee may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions.

(d) After the Turnover Date, any applicant or other person who is dissatisfied with a decision of the Architectural Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven days after the date the Architectural Committee renders its written decision. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. Any decision rendered by the Board on appeal of a decision of the Architectural Committee shall be final and conclusively binding on all parties and shall be deemed to be the decision of the Architectural Committee for all purposes under this Declaration. The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Architectural Committee, including, without limitation, requiring payment of a reasonable fee by the appealing party.

15. No Liability for Approval or Disapproval. Neither the Developer, nor the Homes Association, nor any member of the Architectural Committee or the Board shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions or guidelines.

16. Covenants Running with Land Enforcement. The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither the Developer, the Homes Association nor any other



person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Lot owned by such Owner. No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during his ownership; provided, however, that (i) the immediate grantee from the builder of the residence on a Lot shall be personally responsible for breaches committed during such builder's ownership of such Lot and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Lot to the extent notice of such breach was filed of record, as provided in the third paragraph of this Section 16, prior to the transfer of ownership.

The Developer, the Homes Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions, reservations and other provisions herein set forth, in addition to any action at law for damages. To the extent permitted by law, if the Developer or the Homes Association shall be successful in obtaining a judgment or consent decree in any such court action, the Developer and/or Homes Association shall be entitled to receive from the breaching party as part of the judgment or decree the legal fees and expenses incurred by the Developer and/or Homes Association with respect to such action.

Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer or the Homes Association may file with the office of the Register of Deeds of Johnson County, Kansas a certificate setting forth public notice of the nature of the breach and the Lot involved.

No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered waiver by the Homes Association respecting a specific violation shall constitute and be deemed to be a waiver of such violation by all other persons and entities (other than the Developer).

17. Assignment of Developer's Rights. The Developer shall have the right and authority, by written instrument made expressly for that purpose, to assign, convey and transfer to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities of the Developer hereunder.



20. Severability. Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

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

THE DEVELOPER:

BROOKWOOD DEVELOPMENT COMPANY, L.C.

By: [Signature]  
Mark R. Simpson, Member

By: SAUL ELLIS AND COMPANY, INC., Member

By: [Signature]  
Saul Ellis, President

STATE OF KANSAS        )  
                                  ) ss.  
COUNTY OF JOHNSON    )

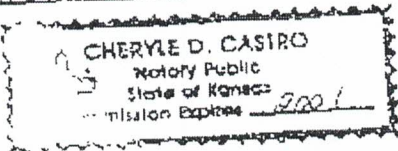
This instrument was acknowledged before me on October 5th, 1997 by Saul Ellis, President of Saul Ellis and Company, Inc., a Kansas corporation, and Mark R. Simpson, in each entity's or person's capacity as members in and on behalf of BrookWood Development Company, L.C., a Kansas limited liability company.

[Signature]  
Notary Public in and for Said County and State

Print Name: Cheryle D. Castro

My Commission Expires:

10/29/01

(SEAL) 

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