

DECLARATION

OF

**COVENANTS, CONDITIONS AND
RESTRICTIONS**

OF

MORNINGSIDE NEIGHBORHOOD

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**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
MORNINGSIDE NEIGHBORHOOD**
(A neighborhood in The Oaks 2nd Addition)

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MORNINGSIDE (“Declaration”) is made effective the ____ day of August, 2004, by The Oaks at Derby, Inc., a Kansas Corporation (the “Declarant”).

RECITALS

A. Declarant is the owner of the following described land (hereinafter referred to as the “Property” or “The Morningside Neighborhood”) located in Sedgwick County, Kansas, to-wit:

**Lots 8-25, Block D
Lots 1-7, Block H
Lots 1-15, Block I,
Lots 1-16, Block J**
The Oaks 2nd Addition to Derby, Sedgwick County, Kansas

B. It is the purpose and intention of the Declarant and of this Declaration that the Property be held and/or conveyed subject to the provisions of this Declaration:

C. In order to insure the proper development of the Morningside Neighborhood as single family residential neighborhoods of high quality, value and desirability and to provide for the efficient maintenance and governance of the common areas, the protection of the value of the Property and the protection of the rights of the property owners and residents therein, it is necessary to establish binding covenants, conditions and restrictions applicable to the Property which shall run with the land and benefit and burden any person(s) acquiring an interest therein, their grantees, successors, heirs, legal representatives and assigns

D. There shall be established The Morningside at the Oaks Homeowners’ Association (the “Morningside Association”), consisting of the owners of the platted lots located within the Morningside Neighborhood.

E. There shall be established The Oaks Master Association (the “Master Association”) consisting of the owners of the platted residential lots located within the The Oaks Addition and The Oaks 2nd Addition of which The Morningside Neighborhood is a part.

NOW, THEREFORE, Declarant hereby declares that The Morningside Neighborhood shall be held sold, and conveyed subject to the following easements, covenants, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of the real property located therein, and which shall run with the land and be binding on all parties having or acquiring any right, title or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of and burden each owner thereof.

ARTICLE I
FORMATION AND POWERS OF ASSOCIATIONS

1.1 **Formation of the Associations.** The Morningside Association and the Master Association shall each be organized as nonprofit corporations for a perpetual term under the laws of the State of Kansas.

1.2 **Purpose of Association.** The Morningside Association has been or will be formed to further the common interests of the Members and Owners (as defined in Article 2.3) of Morningside Neighborhood and to perform the functions hereinafter required or permitted to be performed by the Morningside Association. The principal purpose of the Master Association shall be to provide for the improvement, care and maintenance of the Master Association Common Areas as defined and described in Article 3.1B .

1.3 **Powers and Duties of the Associations.** Each Association shall have the rights and powers as set forth in this Declaration, their respective Articles of Incorporation and Bylaws, together with the general powers as a nonprofit corporation, and they shall each perform each and every duty required of it by this Declaration. Each Association shall own, improve, maintain, mow and keep clean its respective Common Area (as defined in Article III) and to repair, restore and replace the improvements located thereon. Each Association shall also maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Declarant or the Association on their respective Common Area. Each Association may improve their respective Common Area in any manner that it shall find to be necessary, desirable or beneficial to the interest of the Common Area and its Members. Each Association shall have the right to create and establish reserves for the repair, restoration or replacement of any improvement it has the duty to repair, restore or replace hereunder. Each Association through its Board of Directors, shall have the right to adopt such rules and regulations as it may deem advisable for the maintenance, use, conservation and beautification of the Property and for the health, comfort, safety and general welfare of the Owners and occupants of Lots in the Property. Each Association shall be empowered to determine the manner and extent of improving, operating, maintaining, restoring, mowing, trimming and keeping clean their respective Common Area.

1.4 **Declarant's Control Over Associations.** Declarant may carry out all of the duties and exercise all of the powers of the Associations and each Board, including but not limited to appointing the members of the Design Committee and exercising those powers described in Articles 3.3 and Article V so long as it owns a Lot (as defined In Article 2.2), after which time management shall be turned over to the Association, or Board, as the case may be, which shall then exercise the powers and duties herein set out; provided, however, that the Declarant may, at its option, at any earlier time, partially or wholly transfer all or any part of such duties and powers to either Association or Board. In the event of a transfer of a portion of Declarant's powers and duties by the Declarant to an Association or Board, the Declarant shall retain all other powers and duties which are not so specifically transferred. The Association and Declarant shall cooperate fully in the transition of management.

1.5 **Insurance.** The Association shall maintain such insurance on the Common Area and any improvements located thereon as it deems necessary and advisable.

1.6 **Operations and Expenses.** Each Association may establish such committees as may be provided for in its Bylaws, and may engage a manager, secretaries, engineers, auditors, accountants, legal counsel and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The expenses of committees, the salaries of a manager and other employees and the fees of consultants shall be established and paid for by the Association. The Association shall pay for all other expenses necessary or incidental to the conduct or carrying on of its business concerning the Property.

1.7 **Taxes and Assessments.** Each Owner shall be obligated to pay the taxes or assessments assessed against such Owner's Lot and personal property located thereon.

1.8 **Repair and Restoration of Improvements on Common Area.** Should any improvements on the Common Area, or any part or portion thereof, be damaged or destroyed by fire or other casualty or by intentional mischief, the Association owning such Common Area shall be responsible for the cost and expense of repair and restoration, and, so long as there are sufficient insurance proceeds collected as a result of such damage or destruction, the same shall be done substantially in accordance with the original plans and specifications for the improvement of same. The repair and restoration work referred to in this Article shall be commenced promptly after the occurrence of the casualty or damage occasioning the same, and once commenced, shall be pursued diligently to completion.

1.9 **Expenditures by an Association.** Each Association (or the Declarant if performing the duties of an Association) shall have the authority to expend all monies collected from all annual general assessments, special assessments and such other assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association as provided for in this Declaration and the Articles of Incorporation and Bylaws of each Association. However, neither Association shall be obligated to spend in any year all the sums collected in such year by way of annual general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall either Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

ARTICLE II **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

2.1 **Membership.** Membership in each of the Associations shall be mandatory for each record title owner of a Lot and all owners, upon becoming such, shall be deemed automatically to have become Members of each Association. There shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

2.2 **Definition of "Lot".** The term "Lot" shall mean each platted Lot, or a portion of a platted lot located within Morningside Neighborhood upon which a single-family residence may be constructed.

2.3 **Definition of "Member or Owner".** The terms Member or Owner shall mean and refer to every person or entity who or which is a record title owner of a fee or undivided fee interest in any Lot, but not including any Owners who have sold their interest under an executory contract. During such time as such contract is in force, the contract vendee shall be considered to be the Member or the Owner. When more than one person holds a fee interest in any Lot, all such persons shall be Members and Owners.

2.4 **Voting Rights of Morningside Association.** All Members of the Morningside Association shall be entitled to vote on each matter submitted to a vote at a meeting of its Members. The Member or Members owning each Lot shall have two (2) votes for each Lot owned, subject to the following exceptions and conditions:

- A. When any Lot is owned or held by more than one (1) Member as tenants in Common, joint tenancy or any other manner of joint or common ownership, such Members shall collectively be entitled to only two (2) votes relative to such Lot, and if such Members cannot jointly agree as to how those votes should be cast, no vote shall be allowed with respect to such Lot.

- B. Any Member who is in violation of this Declaration, as determined by the Board, shall not be entitled to vote during any period in which such violation continues. Any Member who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote during any period in which any such assessments are due and unpaid.
- C. Notwithstanding the foregoing, Declarant shall be entitled to nine (9) votes for each Lot owned by it.
- D. The Board shall adopt such Bylaws, consistent with the terms hereof, the Articles of Incorporation of the Association and the laws of the State of Kansas, as it deems advisable for any meeting of Members with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

2.5 **Voting Rights of The Master Association.** No Member shall have the right to vote on any matter pertaining to the business affairs of the Master Association. All action of the Master Association shall be taken only by its Board of Directors. The Board of Directors of the Master Association shall be comprised of one member of the Board of Directors from each of its Constituent Associations. A Constituent Association is defined to be one or more nonprofit associations of homeowners' incorporated as provided for in a Declaration executed and recorded by Declarant covering specifically identified platted residential lots within the The Oaks Addition and the Oaks 2nd Addition. The Board of Directors of each Constituent Association shall, once established, elect one of its board members to serve as member of the Board of Directors of the Master Association.

2.6 **Board of Directors.** All actions of each Association shall be taken on their behalf by their respective Boards of Directors (each a "Board"), except when a vote of the Members of the Morningside Neighborhood is specifically required by this Declaration, its Articles of Incorporation or its Bylaws. The initial Board of Directors of the Morningside Association shall not be elected by the Owners until such time as the Declarant is prepared to transfer management of the Morningside Association to its Owners and its Board pursuant to Article 1.4. The initial Board of Directors of the Master Association shall not be elected by the Constituent Associations until such time as the Declarant is prepared to transfer management of the Master Association to its Board pursuant to Article 1.4.

ARTICLE III COMMON AREAS

3.1 Description of Common Areas.

- A. The Common Area conveyed or to be conveyed to the Morningside Association is described as follows and is hereinafter referred to as the "Morningside Common Area":

Reserves F, G, H, I, J, and K
The Oaks 2ND Addition to Derby, Sedgwick County, Kansas

- B. The Common Area conveyed or to be conveyed to the Master Association is described as follows and is hereinafter referred to as the "Master Association Common Area":

Reserves B, I, Q, FF, PP, XO, XQ, XS, XT, XU, XV,
The Oaks Addition to Derby, Sedgwick County, Kansas;
and

the 5' wall easement along the south 5'
of Lots 12, 13, 14, 15, 16, 17, 18, 19, 21 and 22, Block H,
the Oaks Addition to Derby, Sedgwick County, Kansas;
and

Reserves A and E, The Oaks 2nd Addition to Derby, Sedgwick County, Kansas

C. The Morningside Common Area and the Master Association Common Area are sometimes referred to collectively as the "Common Area" or the "Common Areas."

3.2 **Dedication of Easements in Morningside Common Area.** Declarant hereby dedicates and conveys to each Member a right and easement of enjoyment in and to the Morningside Common Area. Such easement shall not be personal but shall be appurtenant to and shall pass with the title to every Lot.

3.3 **Rules and Regulations Pertaining to the Morningside Common Areas.** The Morningside Association shall have the power and authority to establish and enforce rules and regulations pertaining to the use and enjoyment of the Morningside Common Areas, including the following, all of which shall be binding upon the Owners and residents of Morningside Neighborhood.

- A. The right to limit the number of guests of Members;
- B. The right in accordance with the Articles and Bylaws of the Morningside Association, to borrow money for the purpose of improving the Morningside Common Area and facilities and to mortgage the Morningside Common Area;
- C. The right to suspend the use of the Morningside Common Area and any recreational facilities thereon by a Member and his/her family for any period during which any assessment against his Lot remains unpaid and delinquent, and for a period not exceeding thirty (30) days for any single infraction of the rules and regulations of the Morningside Association;
- D. To charge reasonable admission and other fees for the use of any recreational facilities situated on the Morningside Common Area;
- E. The right to dedicate or transfer all or any part of the Morningside Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be determined by the Morningside Association; provided that such dedication or transfer shall not be effective unless authorized by a majority of Members present at a specially convened meeting called for such purpose; and
- F. The covenants and restrictions contained herein.

3.4 **Delegation of Use.** A Member's right of enjoyment in the Morningside Common Area shall automatically extend to all members of a Member's immediate family residing with such Member. No guests shall be entitled to exercise such right of enjoyment or to any use of the Common Area except as provided in, and subject to, such regulations as may be promulgated by the Board of the Morningside Association.

3.5 **Easements in the Master Association Common Area.** Declarant hereby reserves unto itself and does not grant to any Owner, Member or resident of any Lot any right or easement of enjoyment with respect to the Master Association Common Area.

3.6 **Title to the Common Areas.** Declarant may retain the title to either or both of the Morningside Common Area or the Master Association Common Area until such time as it desires to convey title to either Common Area to the proper Association; provided, however, title shall be conveyed no later than the time that Declarant turns over management of a Common Area to its Association pursuant to Article 1.4 . Notwithstanding anything to the contrary provided herein, Declarant may, pursuant to Article 9.1 convey additional land to either Association to be held and used as additional common areas.

ARTICLE IV **COVENANTS CONCERNING ASSESSMENTS AND LIENS**

4.1 **Annual General Assessments.** In order to provide funds for the operations of each Association and for the operation, maintenance, care and improvement of the Common Area, and to afford each Association (or the Declarant if it is performing the duties of either Association) the means and resources necessary to carry out its duties and functions, the Board of each Association (or the Declarant as the case may be) shall have the right to establish and assess against each Lot an annual general assessment. Each Board may provide that any annual general assessment may be paid annually, monthly or quarterly, as specified by each Board, from time to time. The obligation of any Owner to pay the annual general assessments shall commence upon purchase of a Lot and is not dependent upon any improvement being erected on the Owner's Lot. Notwithstanding the foregoing, Declarant shall not be obligated to pay any assessment to either Association for any Lot owned by Declarant whether or not any improvements have been erected thereon. Suspension of the right to use the Morningside Common Area or voluntary non-use thereof, shall not relieve any Owner of the obligation to pay assessments to either association. Neither shall any Owner have any right to withhold payment of assessments by virtue of the non-payment thereof by any other Owner or violation of this Declaration or any rule or regulation promulgated by either Association by any other Owner.

4.2 **Determination of Annual General Assessments.** Each year the Board of each Association shall, prior to January 1, determine the total amount needed to be raised by their respective annual general assessment for the next succeeding calendar year. Should the Board of either Association at any time determine, in its sole discretion, that the annual general assessment levied is or may prove to be insufficient to pay the costs of operation and management of the respective Association or in the event of emergencies, each Board shall have authority to levy such additional assessment or assessments as they shall deem necessary.

4.3 **Basis of Assessment, Exemption for Declarant and Builders.** All annual general assessment and initiation assessment shall spread against each Lot equally, except that if any Owner constructs one residence on not more than two Lots, such Owner shall only be required to pay an assessment (whether general or special) for one Lot even though two Lots (or one Lot and a part of another Lot) are owned. Additionally, in view of the substantial efforts and expenditures incurred by Declarant in connection with development of the Common Areas, Declarant, and any licensed general contractor acquiring a Lot from Declarant for the purpose of constructing a residence thereon and offering the same for sale, shall be exempt from imposition of any assessment, whether an annual general assessment or a special assessment, with respect to any such Lot so long as Declarant or such contractor holds legal title thereto, provided that the assessment exemption for such general contractors shall not extend beyond thirty six (36) months from the date any such Lot is conveyed to such contractor.

4.4 **Limitations on Increases in the Annual General Assessments.** The annual general assessment for the Morningside Association shall not be increased by more than 30% from the prior calendar year without an affirmative vote of a majority the Members of the Morningside Association at a meeting duly called for such purpose. The annual general assessment established by the Master Association shall not be increased by more than 30% from the prior calendar year, without an affirmative vote of a majority the members of the Board of the Master Association.

4.5 **Initiation Assessment.** Whenever legal title to a Lot is transferred, the transferee shall pay to the Morningside Association, at the time of the closing of such transfer, the sum of Two Hundred Fifty Dollars (\$250.00) as an initiation assessment. Notwithstanding the foregoing, no initiation assessment shall be due upon (i) the transfer of a Lot by the Declarant to an affiliated entity or a subsequent Declarant; or (ii) the transfer of a Lot by the Declarant to a licensed general contractor for the purpose of constructing a residence thereon and of offering the same for sale.

4.6 **Special Assessments.** In addition to annual general assessments, the Board of Directors of either Association (or the Declarant if it is performing the duties of either Association) may, from time to time, establish a special assessment for capital improvements or for such other purpose as the Board (or the Declarant, if applicable) may deem proper, to be levied in the same manner as the annual general assessment for the purpose of providing additional funds not available through the annual general assessments, to carry out its duties and other functions and purposes contemplated hereunder. No such special assessment by the Morningside Association shall be valid unless one-half of the Members of Morningside Association approve the same. No such assessment by the Master Association shall be valid unless two-thirds of the members of the Board the Directors of the Master Association approves the same. Any special assessments shall become a lien against each individual Lot (other than any Lot owned by Declarant or a builder) at the time of such assessment) in the same manner otherwise provided for in this Article. All special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month following the date that the same shall be established by the assessing Association.

4.7 **Proration of General or Special Assessments on Lots No Longer Exempt.** In the event a Lot is exempt from an assessment pursuant to the exceptions contained in Article 4.3 or 4.6, at such time as such exemption becomes no longer available during such calendar year, the applicable assessments (except the Initiation Assessment) shall be prorated for such year (based on the remaining number of days in such year) and be paid by the non-exempt Owner.

4.8 **Special Assessments For Curing Breach of Declaration.** The Morningside Association is hereby granted the authority to establish and levy a special assessment against any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach has resulted in an expenditure by the Association for repair, remedy or cure of such breach. Any such special assessment shall be due and payable upon assessment.

4.9 **Collection of Assessments.** The Morningside Association (or the Declarant, so long as it is carrying out the duties and powers of the Morningside Association) shall have the right, power and obligation to collect and enforce the collection of all annual general assessments and all special assessments levied or assessed by both the Morningside Association and the Master Association, and may, in addition to such assessments, charge and assess costs and expenses incurred in the collection of all such assessments, including reasonable attorneys' fees, and may assess penalties and interest for the late payment or nonpayment thereof. The Morningside Association shall remit to the Master Association, no less often than monthly, all annual general assessments and special assessments levied or assessed by the Master Association whether or not such assessments are actually collected by the Morningside Association or not. The Morningside Association shall not receive any compensation for collecting and remitting the assessments due to the Master Association.

4.10 **Delinquency, Assessments and Liens.** Any annual general assessment, special assessment or initiation assessment which is not paid within thirty (30) days of its due date shall be deemed delinquent and a lien shall automatically be imposed against the Lot to secure the payment of the delinquent assessment.

4.11 **Notice of Delinquency.** At any time after any annual general assessment, special assessment or initiation assessment against any Lot has become delinquent and has become a lien against a Lot, the Association may record a Notice of Delinquency as to such Lot in the office of the Sedgwick County Register of Deeds, which Notice shall state the amount of such delinquency and that it is a lien upon the Lot, and the interest, costs (including attorneys' fees) and penalties which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof. Such Notice shall be signed by an officer or a member of the Board of the Association. Upon payment of the unpaid assessment, interest, penalties and costs in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

4.12 **Enforcement of Liens.** A lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency filed as provided in Article 4.12, may be foreclosed in the same manner as a mortgage on real property as provided by the laws of Kansas. In any action to foreclose any such lien, the Association shall be entitled to recover its costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by the Association.

4.13 **Subordination to Mortgages.** Each and every assessment and lien, together with any costs, penalties and interest provided for in this Declaration, shall be subordinate to the lien of any valid bona fide mortgage which has been, or may hereafter be given in good faith and for value on the interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at a foreclosure sale shall be bound by the restrictions, assessments and liens set out in this Declaration, except those arising prior to the foreclosure sale.

4.14 **Personal Liability.** Each Owner of each Lot, by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general or special assessment levied against such Lot during the Owner's period of ownership.

4.15 **Interest on Delinquent Assessments.** All assessments (general, special and initiation) which remain due and unpaid thirty (30) days after the same are due shall thereafter accrue interest at the rate of fifteen (15%) percent per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

ARTICLE V **ARCHITECTURAL CONTROL**

5.1 **Approval Required of Plans and Specifications.** Except as otherwise specifically provided in this Declaration, no Structure (as defined in Article 5.2) shall be commenced, erected, placed, moved on or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any manner which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Lot, unless plans and specifications (including a description of any proposed new use) therefor shall have been first submitted to and approved in writing by the Design Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Design Committee. The decision of the Design Committee shall be final and conclusive.

5.2 **Definition of "Structure".** The term "Structure" shall mean and include any thing or device (other than trees, shrubbery, hedges and landscaping), the placement of which upon any Lot may affect the appearance of such Lot, including, by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, covered or uncovered patio, swimming pool, tennis court, clothesline, radio or television antenna, fence, curbing, paving, wall more than two (2) feet in height, satellite dish, signboard or any temporary or permanent improvement to such Lot. The

term "Structure" shall also include (a) any excavation, fill, ditch, diversion dam or other thing from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and (b) any change in the grade of any Lot of more than six (6) inches from that existing at the time of purchase by each Owner.

5.3 **Rules and Statements of Policy.** The Design Committee may also promulgate rules governing the form and content of plans and specifications to be submitted for approval or outlining the various types of improvements on Lots, including, without limitation, exterior lighting and planting of trees and shrubbery, and may issue statements of policy with respect to approval or disapproval of various architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Design Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the Design Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Design Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the Design Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter, provided that (1) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (2) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

In the event the Design Committee fails to approve or disapprove any plans or specifications submitted to it for approval within (30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

5.4 **Removal and Alteration of Structures: Lien.**

- A. If any Structure shall be constructed, altered, modified or placed upon any Lot, or any new use commenced on any Lot, other than in accordance with the plans and specifications approved by the Design Committee, such Structure or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein. Upon written notice from the Design Committee, any such Structure so constructed, altered, modified or placed upon any Lot shall be reconstructed, re-altered, re-modified or removed and any such use shall be terminated, so as to eliminate such violation.
- B. If within fifteen (15) days after notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or elimination of the same, the Morningside Association or the Design Committee shall have the right, through their agents and employees, to enter upon such Lot and to take such steps as may be necessary to eliminate such violation, and the cost thereof shall be assessed against the Lot and enforced as provided for in Article 4.8. Additionally, the Owners of the Lot shall be personally liable to the Association for such costs and expenses incurred by the Association in remediating or curing the violation.

5.5 **Certificate of Compliance.** Upon completion of the construction or alteration of any Structure in accordance with plans and specifications approved by the Design Committee, the Design Committee shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such Structure and the Lot upon on which such Structure

is placed, and stating that the plans and specifications, the location of such Structure, and the use or uses to be conducted thereon have been approved and that such Structure complies therewith. Preparation and recording of such Certificate shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of this Article shall be prima facie evidence of the facts therein stated, and, as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all Structures on the Lot, and the use or uses described therein, as of the date of such certificate comply with all the requirements of this Declaration as to which the Design Committee exercises any discretionary or interpretive powers.

5.6 **Right of Inspection.** The Morningside Association or any of its agents may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and neither the Design Committee, the Morningside Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

5.7 **Membership of Design Committee.** The original members of the Design Committee shall be three persons appointed by Declarant. Upon the death or resignation of any member of the Design Committee, Declarant shall appoint a successor, unless at such time, Declarant has relinquished its rights to the Morningside Association as hereafter provided. In such event, the Morningside Association shall have full authority to designate a successor member. The act of a majority of the Committee shall be binding and the majority of the Committee may designate a representative to act for it. Declarant shall retain its rights hereunder until the same are relinquished to the Morningside Association. Declarant may relinquish its rights or any portion thereof under this Article to the Morningside Association by advising the Morningside Association in writing of its intent to do so and in such event, the Morningside Association shall have the authority of Declarant under this paragraph. Declarant shall relinquish such rights at such time as Declarant shall cease to own any Lots in the Addition. The Design Committee may delegate its rights and responsibilities on a limited basis to the Board from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation

5.8 **Initial Policy Guidelines.** The following initial policy guidelines have been established and the same may be changed from time to time pursuant to the provisions of Article 5.3 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the Design Committee to determine current policy guidelines.

- A. There shall be no rock yards and all yard areas, exclusive of improvements, shall be at least eighty percent (80%) grass.
- B. There shall be no underground homes.
- C. All basketball goals shall be either white or glass. No "home-made" basketball backboards or supports shall be permitted. All basketball goals and supports shall be first approved by the Design Committee.
- D. All recreation and play equipment shall be located in the rear of any lot except for basketball goals.
- E. There shall be no above-ground swimming pools.
- F. No storage sheds or out buildings shall be permitted except as may be specifically approved by the Design Committee. Any approved storage sheds or out-buildings shall be constructed of the same material and painted the same color as the home and shall be located in the back yard of the residence.

- G. All vegetable gardens shall be in the back yards only.
- H. Dog runs must be screened from view from neighboring homes with fencing or other appropriate material.
- I. Lawns shall be mowed on a regular basis at an appropriate height so as to maintain a neat appearance.
- J. No Christmas lights shall be put up before Thanksgiving and all Christmas lights shall be taken down no later than February 15 of the following year.
- K. No window shall contain any reflective material such as aluminum foil.
- L. Pool buildings or gazebos may be constructed in any back yard, provided that the same shall not exceed one story in height, are allowed by applicable building codes and the location, design, materials and colors are approved by the Design Committee.
- M. All firewood stacks shall be in the back yard and any stack in excess of two cords shall be screened from view from neighboring lots.
- N. All forms of sculpture or "yard art" must first be approved by the Design Committee.

5.9 **No Liability.** Neither the Design Committee, Declarant, the Morningside Association, nor any officer, director, member, agent, or employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article 5.

ARTICLE VI

GENERAL COVENANTS AND RESTRICTIONS

6.1 **General.** The Property is subject to the conditions, covenants, restrictions, reservations and easements herein declared to ensure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to ensure the best development of the Property; to encourage and secure the erection of attractive homes thereon, with appropriate placement thereof on building sites; to secure and maintain proper setback from streets and adequate free spaces between Structures; and to provide adequately for proper drainage of each Lot.

6.2 **Construction Requirements.** The minimum number of square feet to be contained in any residential configuration shall be determined from time to time in the discretion of the Design Committee. Each residence shall, unless otherwise approved by the Design Committee, include a poured concrete basement which shall contain a floor area comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages.

6.3 **Roofs and Windows.** Except as otherwise authorized by the Design Committee, the roofs of all Structures shall be Heritage II, Weathered wood, or other comparable quality shingles as approved by the Design Committee from time to time. All Window frames shall be wood or vinyl clad or other composition materials as approved from time to time by the Design Committee.

6.4 **Rules and Regulations.** Each Owner shall obey and comply with all applicable public laws, ordinances, rules and regulations, and all rules and regulations now or hereafter

promulgated, as provided for in this Declaration. No activity which may be or become a nuisance to the neighborhood shall be carried on upon any Lot.

6.5 **Damage to Common Area, Etc., Prohibited.** No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area or the residence or Lot of any other Owner.

6.6 **Single-Family Residences.** No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family residence for private use, with a private garage and other Structures incidental to residential use, which are first approved by the Design Committee. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot.

6.7 **No Excavations.** No excavations, except such as are necessary for the construction of a residence or improvements, shall be permitted on any Lot without prior written approval of the Design Committee.

6.8 **No Trash, No Storage.** No trash, dirt, rock, slag lumber, metal, auto parts or other refuse may be kept, thrown, stored or dumped on any Lot or Common Area. No building materials of any kind or character shall be placed or stored upon any Lot for more than thirty (30) days prior to the commencement of construction of a residence or other improvements thereon, and then such materials shall be placed only within the property lines of the Lot upon which the improvements are to be erected and shall not be placed in the street or between the curb and property line. Trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis. Containers may be placed in the open on any day that a pickup is to be made, at such place on the Lot so as to provide access to persons making such pickup. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property.

6.9 **No Business Allowed.** Except as otherwise specified in this Declaration or as authorized by the Board of Morningside Neighborhood, no retail, wholesale, manufacturing, repair or service business of any kind, shall be permitted on any Lot or in any residence, even though such activity does not include the employment of any additional person or persons in the performance of such services. Nothing herein shall be construed to prevent residential building contractors, business consultants or similar operations, from conducting business on Lots so long as the amount of any traffic associated therewith is acceptable to the Board.

6.10 **Temporary Buildings.** Except as authorized by the Board, no garage, tent, shack, shed or outbuilding erected on a Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any Structure of a temporary character be used for human habitation.

6.11 **Used Houses; Trailers.** No used, secondhand or previously erected house or building of any kind can be moved or placed upon any Lot, nor shall any trailer be moved, placed or permitted to remain upon a Lot; provided that Declarant may install for administrative and sales purposes a trailer or trailers upon Lot (s).

6.12 **Animals.** No birds, animals or insects, except dogs, cats or other household pets, shall be kept or maintained on any Lot. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Property without the express written consent of the Board. The Board may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot, and the Owners shall strictly comply therewith.

6.13 **Signs.** Except as authorized by the Board, and except for those installed by Declarant, its marketing representatives or builders or contractors as authorized by Declarant, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained

on any of the Lots; provided, however, that permission is hereby granted for the erection and maintenance of not more than one temporary, unlighted, unanimated signboard on each Lot as sold and conveyed, which signboard shall not have a surface area more than ten (10) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the Lot and/or residence upon which it is erected and improvements thereon, if any. No signs, advertisements, billboards or advertising structures shall be placed within the Common Area or street right-of-way without the approval of the Design Committee, and in the event of a violation of this Article 6.13 the violating party shall pay a fine to the Association in the amount of \$100 for each day the violation continues.

6.14 **Sight Lines.** No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the minimum front building setback lines established on the plat of the Property. No hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct sight lines at any corner. Trees, shrubs and other plants which die shall be promptly removed from the Property.

6.15 **Antennas.** Except as authorized by the Design Committee, there shall not be erected any external television or radio antennas or permanent clothesline structures, provided, notwithstanding the foregoing, and Owner may install within his or her Lot a television satellite dish having a diameter of not more than 24 inches, so long as the location of such dish is satisfactory to the Design Committee.

6.16 **Storage.** No item of personal property may be stored upon any of the Common Areas. No inoperable automobile, truck, motorcycle or, motorbike may be stored outdoors on any Lot. No, boat, personal watercraft, boat, travel or other trailer, camper, recreational vehicle or similar item may be stored outdoors on any Lot

6.17 **No Joyriding.** Except as otherwise authorized by the Board, motorized scooters, minibikes, mopeds, gopeds, go karts and similar vehicles shall be operated for transportation only, and no joyriding on the streets, any Lot or the Common Areas shall be allowed.

6.18 **Requirement to Keep Lot in Good Order and Repair.** Each Owner (other than Declarant; provided it shall cause all Lots owned by it to be mowed periodically) shall keep all Lots owned by it, and all improvements therein or thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns; the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Property. If, in the opinion of the Board, any Owner fails to perform the duties imposed by the preceding sentence, the Board, after approval by a two-thirds decision of the Board, and after fifteen (15) days' written notice to Owner to remedy the condition in question, shall have the right, through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof shall be a binding personal obligation of such Owner, and the Board may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article III hereof.

6.19 **Division of Lots Prohibited.** Except as authorized by the Design Committee, no platted Lot shall be split or divided into more than one Lot or building site, but more than one Lot may be used as a building site for one dwelling.

6.20 **Trees.** Except as authorized by the Board, no tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the Design Committee, other than those which are diseased or materially damaged. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources upon the Property.

The Declarant or the Association may designate certain trees, regardless of size, as not removable without written authorization.

6.21 **Requirement to Plant Lawn, Etc.** As soon as practicable after completion of a residence on a Lot, the Owner shall plant a lawn and at least (10) perennial shrubs and/or bushes and at least two (2) trees, with the trunk of each tree being a minimum of two (2) inches in diameter, on such Lot.

6.22 **No Disturbance of Streams or Drainage Facilities.** No lake, pond, stream or water drainage facilities, natural or erected, shall be disturbed other than by Declarant or the Associations.

6.23 **Fences.**

- A. Declarant reserves the right to construct and install a fence (including a “living fence”), wall or entrance treatment or monuments of a style and of materials satisfactory to the Declarant, within any of the fence or wall easement areas or entry areas shown on the plat of the Property, or established by other easement instruments.
- B. All fences must be constructed of black wrought iron only. There shall be no wood or chain link fences installed on any Lot. No fence may exceed six (6) feet in height.
- C. All fences must be approved by the Design Committee prior to construction or installation on any Lot.

6.24 **Model Homes and Real Estate Offices.** Notwithstanding anything to the contrary herein, any Lot owned by Declarant, or any person or entity authorized by Declarant may be used for a model home or for a real estate or administrative office pertaining to the development of the Property (including temporary, mobile, modular, prefabricated or a permanent Structure) until all the Lots have been sold to consumers or building contractors for construction of residences thereon.

6.25 **Drainage.** Upon the completion of construction of a residence and other improvements on a Lot, the Lot shall be graded so as to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots and/or the Common Areas, as such guidelines, standards and plans are established by the City of Derby, Sedgwick County, the Declarant or the Design Committee. The Board and persons designated by the Board shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination by the Board concerning whether or not a Lot is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners and, provided, so long as Declarant owns a Lot, the Declarant (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Board under this Article 6.25 on the request of any Owner and, in the event Declarant so overrides a decision of the Board, any subsequent reference in this Article 6.25 to the Board shall mean the Declarant. In the event and time the Board determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Board shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If thirty (30) days after the notice of such violation, or such additional time as may be specified by the Board, the Owner of such Lot shall not have taken reasonable steps to correct the same, the Board shall have the right, through its agents and contractors, to enter the Lot and/or Common Area and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such correction together with 20 percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Association shall establish a special assessment applicable to such Lot for the costs thereof pursuant to Article 4.8 and shall be entitled to enforce the assessment pursuant to Article IV hereof.

6.26 **Proximity to Golf Course.** The Property and each Lot is in the vicinity of a golf course. Each Lot Owner accepts the fact that from time to time golf balls may be hit into their Lot and golfers may retrieve golf balls from their Lot. Declarant, the Associations and the owner and/or operator of the golf course shall have no responsibility and shall incur no liability for any claims, damages or losses caused by golfer(s) hitting golf balls onto or retrieving golf balls from any Lot. Each Owner hereby releases the Declarant, the Associations and the owner and/or operator of the golf course for any liability arising from golf balls being hit onto their Lot or golfers retrieving golf balls from any Lot. Lot owners shall not have any right to use the golf course by virtue of their ownership of a Lot and there is no assurance that the land upon which the golf course is now located will always be used as a golf course.

6.27 **No Trespassing on Golf Course.** Owners, their families and guests shall not trespass on the golf course property. Further, in order to prevent injury to children, Owners shall take all necessary action to prevent children from playing on or straying onto the golf course.

ARTICLE VII **EASEMENTS AND ACCESS CONTROL**

7.1 **Public Utility and Floodway Easements Dedicated.** Easements for the installation and maintenance of all public utilities and for floodways on Lots are dedicated as shown on the recorded Plat of the Property.

7.2 **Easements in Favor of Declarant and Association.** Declarant specifically reserves unto itself, its successors and assigns, and for each Association, in connection with the use, operation and maintenance of its Common Area, a perpetual, nonexclusive easement and right-of-way over the Lots and Common Area for the purpose of constructing, maintaining, repairing, replacing and rebuilding water sprinkler and irrigation systems, including water lines, water wells, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Additionally, Declarant specifically reserves unto itself, its successors and assigns, and for each Association, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any entrance treatment, fence, wall, walkway, water sprinkler and irrigation systems (including water wells, sprinkler controls, and electric meters and lines associated therewith), or any signage pertaining to or serving the Common Area or the residential development within any wall, utility and/or drainage easement shown on the current or any future plat of the Property, or located on a Lot but, due to oversight, not actually located in the appropriate easement area.

ARTICLE VIII **NOTICE OF POSSIBLE SPECIAL ASSESSMENTS AND WATER ENCROACHMENT**

8.1 **Special Assessments.** Notice is hereby given to each purchaser of a Lot that special assessments may be spread to their Lot by the City of Derby, Kansas, in the future, due to the installation of water mains, sanitary sewers, streets, storm water sewer, storm water drain, sidewalks, sanitary sewer pump stations, accel/decel lanes, traffic signalization, etc., and other improvements that may be assessed against a Lot under Kansas law.

8.2 **Water Encroachment.** Notice is hereby given that due to the grading and drainage of each Lot (which is necessary to enhance the views from residences, particularly those with “walk-out” or “view-out” basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas to the rear of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to the lake, stream or other waterway, water from such areas may spill over into the Lot as a result of such

rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the yard, trees, vegetation, or to fences, gazebos, patios, playground equipment or other improvements or installations within the yard area. Neither Declarant, the building contractor or any real estate agent or brokers involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

ARTICLE IX **ADDITIONAL LAND**

9.1 **Annexation of Additional Land and/or Common Area.** Declarant may, from time to time, annex, add or include additional land into the Morningside Neighborhood or annex, add or include additional land subject to the Master Association. Furthermore, Declarant may transfer additional land to the Morningside Association as additional Common Areas or the Master Association as additional Master Association Common Areas. Upon such annexation or transfer, such property shall become subject to the terms and conditions of this Declaration by the execution and filing for recordation with the Sedgwick County Register of Deeds of an instrument expressly stating an intention to so annex or transfer such land and describing the real property to be so annexed or transferred. During the twenty (20) year period commencing with the date of the recording of this Declaration, Declarant, its successors and assigns, may annex or convey such additional real property in its absolute discretion. From and after the termination of said twenty (20) year period, such additional real property may be annexed or conveyed only with the approval of 2/3 of the votes of the Members of the Morningside Association or if the property to be annexed real property is to be annexed to the Master Association Common Areas, 2/3 of the Directors of the Master Association.

ARTICLE X **MISCELLANEOUS**

10.1 **Provisions Binding on Grantees.** The Association and each grantee hereafter of any part or portion of the Property covered by this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of the Property, accepts the same subject to all of the terms, conditions, restrictions, duties and obligations and subject to the various rights and powers of the Association and Declarant provided for in this Declaration.

10.2 **Interpretations of Restrictions.** In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants or other agreements between parties, provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any residence site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then, in that case, the provisions of the Declaration shall control.

10.3 **Construction and Validity of Restrictions.** All of the restrictions, conditions, covenants, reservations, liens and charges contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

10.4 **Assignment of Powers.** Any and all rights and powers of Declarant provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned,

conveyed or released by Declarant to any third party and/or to the Association. The Declarant's assignee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions prior to the effective date of the assignment.

10.5 **Waiver and Exceptions.** The failure by the Association, Declarant, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

10.6 **Titles.** All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

10.7 **Successors-in-Interest.** Reference herein to either the Association or Declarant shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

10.8 **Term.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, Declarant, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of one (1) year each, unless an instrument, signed by Owners of not less than seventy-five percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

10.9 **Amendments.** Amendments to this Declaration may be made by Declarant, or its successors and assigns, in its sole discretion, so long as Declarant (or its successors and assigns) retains ownership of ten percent (10%) of the Lots within the Morningside Neighborhood. Following such date, any provision contained in this Declaration may be amended, repealed, or additional provisions added to this Declaration, as follows:

- A. **Notice.** Notice of the subject matter of the proposed amendment shall be included in a notice to the Owners of a meeting of the Morningside Association or to the Board of the Master Association of a meeting of the Board of the Master Association, at which the proposed amendment shall be considered.
- B. **Resolution.** A resolution adopting a proposed amendment may be proposed by the Board or Declarant. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners of the Morningside Association or the members of the Board of the Master Association casting not less than one-half (1/2) of the aggregate number of votes cast at such meeting. Such votes may be cast in person or by proxy as provided for herein and in the Bylaws of the Association.

A copy of each amendment provided for in this Article shall be filed of record in the office of the Sedgwick County Register of Deeds. With respect to amendments, following the date the Declarant no longer owns ten percent (10%) of the Lots, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the Bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

Notwithstanding the foregoing, so long as Declarant owns three (3) Lots, any such amendment shall require the written consent of the Declarant, and, further, no amendment materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

10.10 Mortgage Protection Clause. No breach of any covenant, condition or restriction herein contained, nor the enforcement of any lien provided for herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale.

10.11 Enforcement and Arbitration.

- A. The covenants set forth herein shall run with the land and bind each Owner, their successors and assigns, and all parties claiming by, through or under each Owner, and shall be taken to hold, agree and covenant by the Owner of each Lot, its successors and assigns, to conform to and observe this Declaration and each and every term and condition hereof.
- B. The Declarant, the Owner(s) of any Lot or the Association shall have the right to enforce or to prevent the breach of the terms and conditions set forth herein. Any action relating to any rights and obligations arising under, or in connection with, this Declaration, including, but not limited to, an action to seek enforcement of or to prevent the breach of any of the covenants and restrictions contained herein, shall be resolved solely and exclusively by arbitration in accordance with the Kansas Uniform Arbitration Act (the "Act"), as modified from time to time, in accordance with the procedure set out below. However, the provisions of this paragraph 10.11 shall not prevent the Declarant or the Association from foreclosing any lien created pursuant to this Declaration in the Sedgwick County District Court or preclude any party from obtaining a temporary injunction from the Sedgwick County District Court pending the designation of the arbitrators. After the arbitrators have been selected and accepted such appointment, any temporary injunction issued by the Sedgwick County District Court shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

Any of the aforementioned parties may request arbitration of any matter in dispute. The party requesting arbitration shall do so by giving written notice to the other party, specifying in the notice the name and address of the person designated to act as arbitrator on the first party's behalf. Within ten (10) days after the service of this notice, the other party shall give notice to the first party, specifying the name and address of the person designated to act as arbitrator on the second party's behalf. If the second party fails to notify the first party of the appointment of such party's arbitrator within the time specified, then the first arbitrator appointed shall appoint the second arbitrator. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and the two arbitrators shall together appoint a third arbitrator. If the two arbitrators are unable to agree upon that appointment within twenty (20) days after the appointment of the second arbitrator, then the parties to such dispute may apply, upon notice to the other party, to the Kansas District Court located in the County in which the Property is located for the appointment of the third arbitrator. In rendering their award, the arbitrators shall have no power to modify any of the covenants, conditions and restrictions contained herein.

The arbitrators so selected must be at least thirty (30) years old and may NOT be an Owner or occupant of a Lot, and shall possess a minimum of ten (10) years' experience in the residential construction business.

The arbitrators may grant any remedy or relief the arbitrators deem just and equitable and within the scope of the agreement of the parties. The arbitrators shall specifically have the power to order equitable relief, including, but not limited to, injunctions or specific performance. The award resulting from any arbitration hereunder shall be final and binding on the parties and judgment may be entered on the award and shall be enforced in accordance with the laws of the State of Kansas.

In connection with any arbitration proceeding hereunder, the prevailing party in such proceeding, or the non-dismissing party where a dismissal occurs other than by reason of settlement, shall be entitled to recover its reasonable costs and expenses, including, but not limited to, attorneys' fees, from the non-prevailing party and, further, the non-prevailing party shall pay all fees and expenses of the arbitrators and all other expenses of the arbitration.

10.12 **Exclusion of Applicability.** The Declarant shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to Lots which are unimproved and under its ownership or the ownership of its assigns or licensed contractors at the time of such waiver. The Declarant specifically reserves the right to carry on its business on the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Declarant.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

THE OAKS AT DERBY, INC.
a Kansas corporation

W. E. Lusk, Jr., President

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

The foregoing Declaration of Covenants, Conditions and Restrictions was acknowledged by W. E. Lusk, Jr., President of The Oaks at Derby, Inc., a Kansas Corporation, this ___ day of August, 2004.

Notary Public

My appointment expires: