

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby subjects all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

WHEREAS, Developer, as the present owner and developer of the above-described property, desires to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

Lots 36 through 52, and Tracts H and I, COTTONWOOD CANYON, THIRD PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

Lots 6 through 35, and Tracts D, E, F and G, COTTONWOOD CANYON, SECOND PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

Lots 1 through 5, and Tracts B and C, COTTONWOOD CANYON, FIRST PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

WHEREAS, Developer has executed and filed with the Register of Deeds of Johnson County, Kansas, plats of the subdivision known as "Cottonwood Canyon", which plats include the following described lots and tracts:

WITNESSETH:

THIS DECLARATION is made as of the 3rd day of December, 2008, by Lenexa Land Holdings, LLC, a Kansas limited liability company ("Developer").

**COTTONWOOD CANYON  
HOMES ASSOCIATION DECLARATION**

**ARTICLE I. DEFINITIONS**

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

- (a) "Board" means the Board of Directors of the Homes Association.
- (b) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer with the Recording Office stating that all of the Lots in the Subdivision (as then 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 Certificate of Substantial Completion or similar instrument in lieu thereof in Developer's absolute discretion at any earlier 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.

(c) "City" means the City of Lenexa, Kansas.

(d) "Common Areas" means (i) the Pool Area; (ii) Tract C of Cottonwood Canyon, First Plat, Tracts E, F and G of Cottonwood Canyon, Second Plat and Tract I of Cottonwood Canyon, Third Plat; (iii) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the Subdivision; (iv) all landscape, recreational or drainage easements on the Golf Course or other property that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of the Subdivision and/or all Owners within the Subdivision; and (v) 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 Subdivision. "Common Areas" shall also include, for purposes of the areas to be maintained by the Homes Association, the following areas that are owned by the Golf Course Owner:

(1) The private lake, dam and surrounding area that is west of Cottonwood Canyon, Second Plat, including, without limitation, the aeration fountain in the lake and the walking trails (but not golf cart paths) in the immediate area.

(II) The lighting in and around the trees south of the entry area at 94<sup>th</sup> Street near the office park and the tee box for the 15<sup>th</sup> hole.

(III) Such other similar areas on the Golf Course as may be specified by the Developer, in an amendment or supplement to this Declaration filed with the

Recording Office, as being the responsibility of the Homes Association to maintain.

(e) "Declaration" means this instrument, as the same may be amended, supplemented or modified from time to time.

(f) "Developer" means Lenexa Land Holdings, LLC, a Kansas limited liability company, and its successors and assigns.

(g) "Golf Course" means the golf course facility located adjacent to the Subdivision.

(h) "Golf Course Owner" means The Golf Club of Kansas, LLC, a Kansas limited liability company, and any successor owner of the Golf Course.

(i) "Homes Association" means the Kansas non-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision.

(j) "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 (i) for purposes of determining the amount of periodic and special assessments due with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer, and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot."

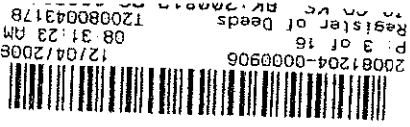
(k) "Owner" means the record owner(s) of title to any Lot, including the Developer.

(l) "Pool Area" has the meaning set forth in Article XIV below.

(m) "Private Streets" means all streets and roadways within the Subdivision but only prior to being accepted by the City as public streets.

(n) "Recording Office" means the Office of the Register of Deeds of Johnson County, Kansas, or such other office in which deeds, mortgages and other documents affecting real property in Johnson County, Kansas are recorded in order to give public notice thereof.

(o) "Subdivision" means, collectively, all of the above Lots in Cottonwood Canyon, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.





(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the Subdivision; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Homes Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or

1. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

**ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION**

Subject to the foregoing, the Homes Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. During any period in which a member is in default in the payment of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the Subdivision and every such Owner shall be a member.

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in monthly assessments as provided in clause (c) of Section 2 of Article IV below and to vote on any special assessments as provided in clause (III) of Section 1(b) of Article V below.

**ARTICLE II. HOMES ASSOCIATION MEMBERSHIP**

(p) "Turnover Date" means the earlier of: (i) the date as of which 95% of all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences have been constructed thereon, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

plats in which such restrictions, obligations, agreements and reservations are set forth or otherwise by law. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of the Golf Course Owner or any governmental authority, utility or any other similar person or entity therein or thereto, as applicable.

(c) To maintain public liability, worker's compensation, fidelity, property coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association, the Common Areas and the property within the Subdivision.

(d) To levy the assessments and other charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

(e) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer or other parties and the Homes Association and its members, and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the Subdivision, and the sharing of expenses associated therewith.

(g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

(h) To engage the services of a security guard or security patrol service.

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Subdivision; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Subdivision neat in appearance and in good order.



(e) The Homes Association shall satisfy its obligations with respect to the Pool Area, as set forth in Article XIV below.

(d) The Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replating, controlling, maintaining, operating and insuring, as applicable, all Common Areas, subject to any control thereover maintained by the Golf Course Owner or any governmental authority, utility or other similar person or entity, as applicable.

(c) The Homes Association shall provide snow (but not ice) clearing for the driveways and front sidewalks from the driveways to the front porch for the Lots as soon as possible when the accumulation reaches two inches or more and the snow has stopped. The Homes Association shall not be required to apply any salt, sand or other chemical treatments to any such surfaces.

(b) The Homes Association shall provide lawn care, consisting of mowing, edging, fertilizing and weed control of grass areas (excluding designated natural areas) on all Lots, but such mandatory services shall not include the care of any areas which have been enclosed by an Owner with fencing or hedging or otherwise made inaccessible to the Homes Association.

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the normal collection and disposal of rubbish and garbage and for normal recycling for each residence one day per week (which day, if possible, shall be the same for all residences).

2. In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to all Owners within the Subdivision:

(j) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations, restrictions and guidelines, and the recorded declarations, by establishing, levying and collecting fines and other enforcement charges and taking such other lawful actions as the Homes Association, in its discretion, deems appropriate.

(l) To exercise any architectural, aesthetic or other control and authority given and assigned to the Homes Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Subdivision.

(f) The Homes Association shall maintain and trim trees and landscaping along the streets to the extent that the City requires such to be the maintenance obligation of the Homes Association.

(g) The Homes Association shall maintain and repair the Private Streets, as and when necessary, and shall control and operate any private street lights within the Subdivision.

(h) The Homes Association shall maintain, repair and replace any rock or landscape walls that may be installed by or for the Developer around the outside boundaries of all or any part of the Subdivision.

The Board shall have the right to further determine the scope and timing of the foregoing services and shall have the right (but not the obligation) to establish, maintain and expend reserve funds for the improvements on the Common Areas and the services to be provided by the Homes Association under this Section 2.

**ARTICLE IV. MONTHLY ASSESSMENTS AND INITIATION FEE**

1. For the purpose of providing funds to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision (other than Lots then owned by the Developer and other Lots prior to the earlier of initial occupancy of the residence thereon as a residence or the sodding of the yard) shall be subject to a monthly assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV. The amount of such monthly assessment per Lot shall be fixed periodically by the Board, subject to Section 2 below. At the option of the Board, the monthly assessments may be billed and collected on a quarterly basis in advance.

2. The rate of monthly assessment upon each assessable Lot in the Subdivision may be increased as to and for each calendar year:

(a) For each of years 2010 through 2012, by the Board from time to time, without a vote of the members, by up to 20% over the rate of monthly assessment in effect for the preceding calendar year;

(b) After year 2013, by the Board from time to time, without a vote of the members, by up to 10% over the rate of monthly assessment in effect for the preceding calendar year; or

(c) At any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of monthly assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2 of Article III above.

3. The monthly assessment provided for herein shall be based upon the calendar year (commencing in 2009) and shall be due and payable on the first day of each month; provided, however, that the first monthly assessment for each Lot shall be due and payable only upon the earlier of commencement of occupancy of the residence on the Lot as a residence or, if earlier, the sodding of the yard, and shall be prorated as of the date thereof. Notwithstanding any other provision of this Declaration to the contrary, no Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first monthly assessment has been paid with respect thereto.

4. A portion of the monthly assessment may be allocated to reserves to provide funds for repair or maintenance of major items and for other contingencies. Neither the Developer nor the Homes Association nor any member of the Board shall have any liability to any Owner or member of the Homes Association if no reserves are established or maintained or if any reserves are inadequate.

5. An initiation fee of \$300.00 shall be payable by the new Owner to the Homes Association, for use as part of the general funds of the Homes Association, upon each of the following events with respect to each Lot:

(I) The initial occupancy of the residence on the Lot as a residence after the residence is constructed (which initiation fee is in addition to the first monthly assessment, as it may be prorated); and

(II) Each subsequent transfer of ownership of the Lot for value.

#### ARTICLE V. SPECIAL ASSESSMENTS

1. In addition to the annual assessment provided for herein, the Board:

(a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent (I) a fine has been assessed by the Homes Association against the Owner or (II) the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate (by enforcement, self-help or otherwise) any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot; and

(b) shall levy from time to time special assessments against each and every Lot then subject to monthly assessments under Article IV above in an equal amount that is sufficient, when aggregated, to enable the Homes Association (I) to perform its duties as specified in Section 2 of Article III above that require any expenditure during any

1. Each assessment regarding a Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment with respect to the Owner's Lot in full within 30 days after the due date thereof, then such assessment shall be delinquent, the Owner shall be charged a late fee of 5% of the unpaid amount and the unpaid amount shall bear interest at the rate of 10% per annum, compounded monthly (or, if lower, the maximum rate permitted by law) from the delinquency date until paid, which late fee and interest shall become part of the delinquent assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including, without limitation, court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the

**ARTICLE VI. DELINQUENT ASSESSMENTS**

4. Each special assessment shall be due and payable by the Owner of the Lot upon the Homes Association giving written notice of the assessment to the Owner of the Lot, shall be a lien on the Lot until paid in full, and shall be enforceable as provided in this Declaration.

3. If any Owner commences a lawsuit or files a counterclaim or crossclaim against the Homes Association, the Board of Directors, or any committee, officer or member of the Board of Directors, the Board of Directors, or any individual director, committee member of the Homes Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Homes Association, Board of Directors, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees and court costs. Such recovery right shall constitute a special assessment against the Owner and the Owner's Lot.

2. In the event an Owner fails to properly maintain, repair, repaint, or replace any improvements on the Owner's Lot (excluding any items that are the responsibility of the Homes Association to maintain, repair or replace, as expressly provided in this Declaration), the Homes Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair, repainting, or replacement, may enter onto the Lot and perform such maintenance, repair, repainting, or replacement. The Homes Association's costs thereof, plus a reasonable overhead and supervisory fee, shall be payable by the Owner of the Lot and shall be a special assessment against the Owner and the Owner's Lot.

assessment for the proposed capital expenditure by an affirmative vote.  
Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the votes of the members present at such meeting (in person or by proxy) and entitled to vote thereon authorize such special period in an amount in excess of the general and reserve funds of the Homes Association available therefor, (II) to pay the costs of any emergency expenditures deemed necessary by the Board, and (III) to pay the costs of any capital improvements approved by a vote of the members (being for this limited purpose solely the Class B members prior to the

amount of the assessment being collected and the lien on the Lot. Each assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner(s) of the Lot, jointly and severally, at the time when the assessment became due.

2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot, as provided below. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to the earlier of (i) the entry of the order allowing such foreclosure, or (ii) the execution of a deed in lieu thereof, but shall not release such Lot from liability for any assessment applicable to periods thereafter. If the Owner subsequently redeems the Lot from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

3. Payment of a delinquent assessment with respect to a Lot may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the Recording Office, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$250.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board) after December 31, 2009.

4. Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period a lawsuit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the lawsuit and sale of the property under the execution of judgment establishing the same.

5. The Homes Association may cease to provide any or all of the services (including, without limitation, use of Common Areas (other than Private Streets)) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of use privileges or services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Homes Association.

6. No claim of the Homes Association for assessments and charges shall be subject to setoffs or counterclaims made by any Owner. To the extent permitted by law, each Owner hereby waives the benefit of any redemption, homestead and exemption laws now or hereafter in effect, with respect to the liens created pursuant to this Declaration.

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) (regardless of whether the additional property is part of the property platted as Cottonwood Canyon or is known by a name other than Cottonwood Canyon) by executing, acknowledging and recording in the Recording Office a written instrument subjecting such additional property to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof, provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable, as solely determined by the Developer in its absolute discretion.

#### ARTICLE IX. EXTENSION OF SUBDIVISION

2. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the Owner at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

1. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.

#### ARTICLE VIII. NOTICES

Except for matters contemplated in Section 2 of Article III above, the Homes Association shall at no time expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus and available reserves which it may have on hand from prior years. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 2 of Article III above.

#### ARTICLE VII. LIMITATION ON EXPENDITURES

7. Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Lots and the Subdivision, and to continue to provide service, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

**ARTICLE X. AMENDMENT AND TERMINATION**

1. This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (a) the Owners of at least 60% of the Lots within the Subdivision as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer; provided, however, the written consent of the City and the Developer shall always be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision of this Declaration regarding the Private Streets. If such consent of the City is requested, it shall be made in writing to the City clerk. The City shall have 60 days, after receipt of the request, to rule on the request. Subject to the foregoing proviso, after recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors on the Board of the Homes Association and then approved by the members of the Homes Association at a duly held meeting of the members of the Homes Association (called in whole or in part of that purpose) by the affirmative vote of Owners owning at least 60% of the Lots.

2. Anything set forth in Section 1 of this Article to the contrary notwithstanding, except the provision relating to the City's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) any of the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision or the amendment is necessary to cause this Declaration to comply with any applicable law, (iii) a typographical or factual error or omission needs to be corrected in the opinion of the Developer, (iv) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision or the designation of areas owned by the Golf Course Owner to be maintained by the Homes Association, or (v) until December 31, 2012, to make any other amendment the Developer may determine to be appropriate. No such amendment by the Developer shall require the consent of any Owner or the Homes Association.

3. If the rule against perpetuities or any rule against restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the individual(s) signing this Declaration on behalf of the



1. This Declaration shall be governed by and construed in accordance with the laws of Kansas.

**ARTICLE XIII. GOVERNING LAW AND SEVERABILITY**

3. No waiver of any violation or default 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.

2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under 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 or default.

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. 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 provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

**ARTICLE XII. COVENANTS RUNNING WITH THE LAND**

2. The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

1. The Developer shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey, transfer and set over 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 any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. 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 hereunder.

**ARTICLE XI. ASSIGNMENT**

Developer and the now-living children and grandchildren of the individual(s) signing this Declaration on behalf of the Developer as of the date of such execution.

(d) For purposes hereof, "post construction capital expenditures" means any expenditures to be made or incurred after the initial completion (as specified by the Developer) of the Pool Area for equipment, furniture, or other capital assets, including the expansion, addition or replacement of any equipment or facilities, and any other expenditures that would be capitalized under generally accepted accounting principles,

(c) For purposes hereof, the "operating expenses" of the Pool Area generally has the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Pool Area or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, or (iii) any financing or debt service expenses related to the costs described in clause (i) above.

(b) The Homes Association shall pay (i) all operating expenses (as defined below) and (ii) all post construction capital expenditures (as defined below) relating to the Pool Area. The Homes Association shall pay the amounts due from it under this subsection out of the assessments collected from the Owners of the Lots subject to this Declaration.

(a) Following substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of all mortgages, security interests, and mechanic's liens, title to the Pool Area (or the completed portion thereof) to the Homes Association. Such title transfer shall be by special warranty deed. Thereafter, the Homes Association shall cause adequate property and liability insurance to be continuously maintained on the Pool Area and, so long as Developer owns any Lots in the Subdivision, cause the Developer to be named as an additional insured on such insurance coverage.

2. If the Pool Area is so constructed and made available for use by residents of the Subdivision, the following shall apply:

1. The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot, cabana and/or other recreational facilities ("Pool Area") in a place within the Subdivision or on property near the Subdivision and to make such facilities available for use by residents of the Subdivision. The size, location, nature and extent of the improvements and landscaping of the Pool Area, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

**ARTICLE XIV. COMMON AREAS**

2. 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.

consistently applied. All post construction capital expenditures shall be made by and at the discretion of the Homes Association.

(e) By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with use of a swimming pool and any diving board and/or slide and any playground equipment that may be installed as part of the Pool Area. The Developer and the Homes Association and their respective officers, directors, managers, representatives and agents shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. Each Owner, for himself, the members of his family, his guests and invitees, shall be deemed to have released and agreed never to make a claim against the Developer or the Homes Association or any of their respective officers, directors, managers, representatives or agents for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of the Pool Area, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

3. Subject to Section 2 above and Section 4 below, the Developer covenants and agrees to convey, by special warranty deed, all of its rights, title and interest in the Common Areas (except any part thereof that is solely a landscape easement or is within any Lot or the Golf Course or outside of the Subdivision) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Such transfer shall be free and clear of all mortgages, deeds of trust, security interests and mechanic's liens. Notwithstanding the actual date of transfer, the Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Homes Association), subject to any control thereafter maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Developer shall not require the consent of the Homes Association and shall not constitute an assignment by the Developer of any of its rights, as the developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

4. The Developer, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa. In addition, each of the Developer and the Homes Association shall have the right to transfer to the City or the Golf Course Owner (but only



with the transferee's consent) title to or easements over all or any part of the Common Areas so that they become public areas maintained by the City or maintained by the Golf Course Owner.

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

**THE DEVELOPER:**

LENEXA LAND HOLDINGS, LLC

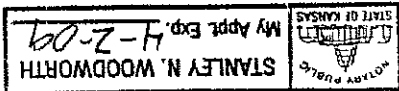
By: *Stephen R. Hughes*  
Stephen R. Hughes, Manager

STATE OF KANSAS )  
) ss. )  
) COUNTY OF JOHNSON )

This instrument was acknowledged before me on December 3, 2008 by Stephen R. Hughes, as Manager of and for Lenexa Land Holdings, LLC, a Kansas limited liability company.

Notary Public in and for said County and State

Print Name: Stanley N. Woodworth



My Commission Expires: 4-2-09 [SEAL]

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