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(Original compared with record)

FILED FOR RECORD
TIME 11:35 A.M.

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**
(The Coves at Tallgrass)

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REGISTER OF DEEDS, FRANKLIN CO., KS
INSTRUMENT # 358
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THIS DECLARATION (the "**Declaration**") is made this 16th day of January, 2008 (the "**Effective Date**"), by Marais des Cygnes Overlook, L.L.C., a Kansas limited liability company (referred to in this Declaration as "**Declarant**").

RECITALS

1. This Declaration is made with respect to that certain real property located in Franklin County, Kansas (the "**Real Estate**"), described in Exhibit A attached to this Declaration and, by reference, made a part of this Declaration, and Declarant is the legal and/or equitable owner of the Real Estate.
2. Declarant desires to place certain covenants, conditions, restrictions, easements, charges and liens upon the Real Estate, for the benefit of Declarant and its successors, grantees and assigns, and to protect the value and desirability of the Real Estate.
3. Declarant hereby agrees that the Real Estate shall be subject to the protective covenants, conditions, restrictions, reservations, liens and charges set forth in this Declaration.

DECLARATION

NOW, THEREFORE, Declarant declares that the Real Estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens described in this Declaration, for the purposes of (i) enhancing and protecting the value, desirability and attractiveness of the Real Estate, (ii) preserving the amenities and maintaining the same located on the Real Estate, and (iii) promoting safety to life, health and property in the area. These easements, covenants, restrictions and conditions shall run with the Real Estate and shall be binding upon all parties having or acquiring any right, title or interest in the Real Estate, or any part thereof, and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS

1. "**Association**" shall mean and refer to The Coves at Tallgrass Homeowners' Association, Inc., a not-for-profit corporation, formed or to be formed pursuant to the laws of the State of Kansas.
2. "**Common Area**" shall mean that part of the Real Estate and all improvements located thereon owned, operated, and/or maintained by the Association for the common use and enjoyment of the residents of The Coves at Tallgrass, including, without limitation, "Tract A" as defined in the Plat, and shall also include the following:
 - (a) All real estate owned in fee simple by the Association evidenced by a deed or deeds to the Association, recorded in the office of the Register of Deeds of Franklin County, Kansas.

(b) Any structures, trees, landscaping, lighting equipment, decorative equipment, area marker or markers, community mailboxes, bus stops, landscaping islands, as shown on the Plat, or other improvements owned, operated, and/or maintained by the Association pursuant to this Declaration and located upon the Real Estate.

(c) All easements, rights, and appurtenances belonging thereto necessary to the existence, maintenance, and safety of the Lots and the Common Area.

(d) All personal property owned by the Association, if any, intended for use by the Association in the exercise of its powers as set forth in this Declaration.

(e) All that portion of the Real Estate owned and/or operated by the Association as common area, open space, park land, stormwater drainage, and stormwater detention areas, as shown on the Plat of the Real Estate, and that are not otherwise maintained by the City of Ottawa, Kansas.

4. "**Common Expenses**" shall mean and include the following:

(a) Expenses of administration; insurance expenses; and expenses incurred in the maintenance, operation, repair, and replacement of the Common Areas and the portions of the Real Estate to be maintained by the Association, including, without limitation, all expenses relating to a water meter and/or irrigation and sprinkler system for the Common Areas;

(b) Reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Association; and

(c) Expenses declared Common Expenses by the Association and assessed against the Owners.

5. "**Declarant**" shall mean and refer to the Declarant described above or any Person to whom Marais des Cygnes Overlook, L.L.C. shall assign its rights as Declarant.

6. "**Lot**" shall mean and refer to any subdivision of the Real Estate pursuant to the Plat. Except as provided in this Declaration no portion of the Common Area shall be included within a Lot.

7. "**Member**" shall mean and refer to each Owner as provided herein.

8. "**Owner**" shall mean and refer to the record owner or owners, whether one or more persons or entities, of the fee simple title to a Lot, including a contract purchaser of a Lot who has complied with the provisions of this Declaration. The term "Owner" shall not mean any mortgagee unless and until such mortgagee has acquired fee simple title to a Lot pursuant to foreclosure or any proceeding in lieu of foreclosure.

9. "**Party Wall Lot**" shall mean any Lot in The Coves at Tallgrass that contains a building, including without limitation, a Residential Unit, detached or attached garage or outbuilding, located on, across, or along the Lot boundary line (a "**Zero Lot Line Building**"), whether or not such Zero Lot Line Building shares a common wall, if such Lot is identified as a Party Wall Lot in writing by Declarant and recorded in the Office of the Register of Deeds of Franklin County, Kansas, as more fully set forth in Article X of this Declaration.

10. "**Person(s)**" shall mean a natural individual(s), corporation, partnership, limited liability company, trustee, or other legal entity capable of holding title to real property.

11. "Plat" shall mean and refer to the final plat of The Coves at Tallgrass, recorded in the Office of the Register of Deeds of Franklin County, Kansas, on January 25, 2008, in ~~Book~~ Slide 322.
12. "Real Estate" shall mean and refer to the submitted land described in Exhibit A.
13. "Residential Unit" shall mean and refer to (a) one single-family, detached residential building located on a single Lot, and (b) each individual residential portion or unit of a townhome building constructed and located on a single Lot.
14. "The Coves at Tallgrass" shall mean and refer to the Real Estate described above, as submitted.
15. "The Coves at Tallgrass Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in The Coves at Tallgrass. That standard may be specifically determined and set forth by the Architectural Control Committee.
16. Other terms may be defined in specific provisions contained in this Declaration and shall have the meaning assigned in such definition.

ARTICLE II
PROPERTY SUBJECT TO DECLARATION

1. **Existing Property.** The Real Estate described in Exhibit A shall be held, transferred, sold, conveyed, and occupied subject to this Declaration.
2. **Merger or Consolidation.** Upon a merger or consolidation of the Association with another not-for-profit corporation (such as a homeowners' association formed to operate and maintain adjacent real estate which might at a future time be developed as a compatible and harmonious residential development) the Association's properties, rights, and obligations may by operation of law be transferred to another surviving or consolidated not-for-profit corporation, or, alternatively, the properties, rights, and obligations of another not-for-profit corporation may by operation of law be added to the properties, rights, and obligations of the Association as the surviving not-for-profit corporation pursuant to a merger. The surviving or consolidated not-for-profit corporation may administer the covenants, conditions, and restrictions established by this Declaration for the existing property, together with the covenants and restrictions established upon any other property as one project. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants, conditions, and restrictions established by this Declaration for the existing property.
3. **Additional Property.** Additional real property ("**Annexation Property**") may be annexed to and become subject to this Declaration as hereinafter set forth in this paragraph 3 at such time as Declarant or the Association may elect.
 - (a) **Supplemental Declarations.** A Supplemental Declaration shall be a writing in recordable form which annexes Annexation Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall contain such other provisions as are necessary to designate such property. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the portion of The Coves at Tallgrass already subject to this Declaration; provided, however, that

an Amendment otherwise authorized under this Declaration may be combined with such Supplemental Declaration.

(b) **Annexation Without Approval of the Association.** If added at the election of Declarant, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association, provided that a Supplemental Declaration covering the Annexation Property shall be recorded by Declarant in the Office of the Register of Deeds of Franklin County, Kansas. The recording of any Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described in the Supplemental Declaration, making the Annexation Property subject to this Declaration and subject to the functions, powers and jurisdictions of the Association, and thereafter the Annexation Property shall be part of The Coves at Tallgrass for all intents and purposes of this Declaration, and all of the Owners of Lots in the Annexation Property shall automatically be Owners in accordance with the terms of this Declaration.

**ARTICLE III
ASSOCIATION**

1. **Membership.** Every Person who is an Owner of the fee simple interest in one or more Lots shall be a member of the Association. Ownership of a Lot shall be the sole qualification for membership.

2. **Voting in the Association.** Voting in the Association shall be as follows:

(a) **Voting.** Members shall be entitled to one vote for each Lot in which they hold the interest required for membership by paragraph 1 of this Article III ("**Voting Interest**"). When more than one Person holds an interest in any Lot, all such Persons shall be members and the vote for such Lot shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any Lot.

(b) **Declarant's Control of the Association and Assignment of Rights.**

(i) Notwithstanding anything in this Article III or elsewhere in this Declaration to the contrary, Declarant shall maintain absolute and exclusive control over the Association and the Architectural Control Committee, including appointment and removal of the President and all other officers of the Association, all directors of the Association board of directors and all members of the Architectural Control Committee, during Declarant's "**Marketing Phase**" of the Real Estate. The Marketing Phase of the Real Estate, for purposes of this Declaration, shall be conclusively deemed to be the period between the recording of this Declaration and the date that Declarant has sold or conveyed all of the Lots in The Coves at Tallgrass (as it exists from time to time) to third parties and the construction of Residential Units on ninety percent (90%) of the Lots has been substantially completed. Until such time, Declarant, in Declarant's sole and absolute discretion, will be entitled to amend this Declaration, amend the Bylaws and Articles of Incorporation of the Association, and cast all votes with respect to the election and removal of Association officers and/or directors and members of the Architectural Control Committee, or any other matter requiring the vote or approval of Association members. Declarant may (but shall not be required to), at any time, voluntarily relinquish all or any part of Declarant's control and rights under this Article.

(ii) Notwithstanding any provision in this Declaration to the contrary, during the Marketing Phase, Declarant may unilaterally assign, transfer or convey, without the approval or

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joinder of any of the Owners or any Person, any or all of Declarant's rights created or reserved to the Declarant under this Declaration. Such assignment, transfer or conveyance may be to (i) any Person who is acquiring one or more Lots owned by Declarant at the time of or immediately before or after the transfer of Declarant's rights, or (ii) any lender holding a mortgage on all the Lots owned by Declarant at the time of, or immediately prior to or following, the transfer of Declarant's rights under this paragraph. Any such assignment, transfer or conveyance shall be effective only when such assignment, transfer or conveyance has been signed by the transferor and the transferee and has been recorded in the Office of the Register of Deeds of Franklin County, Kansas. Declarant may (but shall not be required to), at any time, voluntarily relinquish all or any part of Declarant's control and rights under this Declaration by executing and recording a document setting forth such relinquishment and recording such document.

3. **Quorum Proxies, Voting.**

(a) The quorum requirements for meetings of the Association's Members shall be as described in the Association's Bylaws.

(b) At all meetings of the Association, a Member may vote in person or by proxy executed in writing by such Member. Such proxies shall be filed with the Secretary of the Association before or at the time of a meeting. No proxy shall be valid after twelve (12) months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a Member of his Lot.

4. **Articles of Incorporation and Bylaws.** Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be as set forth in its Articles of Incorporation and/or Bylaws. In any event, if any provision set forth in this Declaration applicable to notice, voting, and quorum requirements are in conflict with any provisions of Kansas law applicable to not-for-profit corporations on the date of this Declaration, or at any time after such date, the applicable provisions of Kansas law shall control.

ARTICLE IV
COVENANT FOR MAINTENANCE FEES OR CHARGES

1. **Regular and Special Fees and Charges.** Each Owner, by accepting a deed, whether expressed in the deed, hereby agrees to pay to the Association or its nominee:

(a) Regular fees or charges; and

(b) Special fees or charges to be fixed, established, and collected from time to time as hereinafter provided.

2. **Purpose of Regular Fees or Charges.** The regular fees or charges levied by the Association shall be used for the following purposes:

(a) Maintenance, care and landscaping of the Common Area, including, without limitation, costs for the water meter, water lines and water charges to water the Common Area, if any, and costs to maintain, repair and replace that part of the Pedestrian Path (as defined in this Declaration) located on a Common Area.

(b) Construction and maintenance of an area marker (or markers) and community mailboxes, if any, for The Coves at Tallgrass.

(c) Managing the Association, including, without limitation, management fees of a management company and necessary legal and accounting expenses.

(d) Establishing contingency reserves as determined from time to time by the board of directors of the Association.

(e) Assessments may be made for the purpose of establishing a capital reserve account for the repair and/or replacement of those parts of the Common Areas and Facilities that are capital in nature. In addition, if a capital reserve account is established, the Declarant or the Association may require all the Owners of the Lots or Residential Units that obtain their title from the Declarant ("**Original Owners**"), to pay an initial capital reserve assessment in an amount equal to two months of the regular assessments, for the capital reserve account, which initial capital reserve assessment shall be paid by each Original Owner at the time such Original Owner receives title to such Original Owner's Residential Unit. The assessment for the capital reserve account shall be in addition to all other assessments due by the Owners as set forth in this Declaration.

(f) Paying insurance premiums for all insurance secured by the board of directors pursuant to this Declaration. Such insurance premiums may include premiums for public liability and property damage insurance to the extent deemed necessary by the board of directors.

(g) Paying such other charges and Common Expenses as may be elsewhere required or authorized by this Declaration, or that the board of directors of the Association may from time to time determine necessary or desirable to meet the purposes of the Association as stated in its Articles of Incorporation, Bylaws, and in this Declaration.

3. **Regular Fees or Charges; Limits Thereon.**

(a) So long as Declarant shall have control of the Association as described in paragraph 2(b) of Article III, Declarant shall set the monthly assessment for each Owner in an amount determined by Declarant, in its sole and absolute discretion, to cover the estimated costs of maintaining the Common Areas and performing the obligations and exercising the powers established under this Declaration, and such costs to the Association shall be assessed equally to each Lot within the Real Estate.

(b) After Declarant shall no longer have control of the Association as described in paragraph 2(b) of Article III, prior to December 31 of each calendar year, the board of directors of the Association shall prepare a budget for the following calendar year which shall cover the estimated costs of maintaining the Common Areas and performing the obligations and exercising the powers established under this Declaration. On the basis of this budget, the regular assessments for each Owner for the following year shall be established by the Association. Within sixty (60) days following the end of each calendar year, the board of directors shall send to each Owner an annual report of assets and liabilities of the Association determined as of the last day of such calendar year. All computations and reports relating to obligations to be performed by the Association under this article shall be accomplished in accordance with accepted accounting practices.

(c) Regardless of whether Declarant shall have control of the Association, on or before the first day of each calendar year, a copy of the annual budget for such calendar year if one is required, together with the proposed regular fees or charges allocable to each Lot shall be delivered to each Owner. If an annual budget is not made as required or Declarant fails to increase the amount of fees or assessments due, a quarterly payment in the amount required by the last prior budget shall be due from each Lot Owner upon each payment date until changed by new regular fees and charges established by the Association or

Declarant, as the case may be. Upon reasonable notice, mortgagees and Owners shall have the right to examine the books and records of the Association at the Association's office. At the end of each calendar year, the Association or the Declarant shall determine, as soon as is reasonably possible, all of the costs incurred in that year, and if the costs have exceeded the budget, the deficiency shall be taken into account and defrayed as part of the budget for the following calendar year. If there is an excess of regular fees or charges collected for such calendar year, such excess shall also be taken into account preparing the budget.

4. **Special Fees for Noncompliance with Declaration.** The Association may levy special fees or charges against any Owner to reimburse the Association for costs incurred for the purpose of bringing an Owner, his Residential Unit, or such Owner's Lot, into compliance with the provisions of the Declaration, the Articles, the Bylaws, and any Rules and Regulations, which special fees or charges may be assessed upon the vote of the board of directors after notice to the Owner and a reasonable opportunity for such Owner to be heard by the board of directors.

5. **Uniform Rate of Fees or Charges.** Both regular and special fees or charges, other than those imposed in accordance with paragraph 4 of this Article IV, must be fixed by the board of directors of the Association at a uniform rate for all Lots.

6. **Date of Commencement of Regular Fees or Charges: Due Date.** Regular fees or charges shall be due and payable quarterly on the first day of January, April, July, and October, in equal installments, and shall be delinquent if not paid within five (5) days after becoming due and payable. The board of directors may, in its discretion, permit an Owner to pay regular fees or charges in one annual payment, on or before March 1, and if so paid to give to the Owner making such an advance payment a reasonable discount for such prepayment; provided, however, that no discount in excess of ten percent (10%) shall be given without the approval of sixty-six percent (66%) or greater of the Voting Interest of the Members in the Association at an annual or special meeting of such Owners. An Owner shall become obligated to pay assessments upon acceptance of title to or taking of possession of such Lot and/or Residential Unit. The board of directors may, in its sole discretion, reduce the regular fees or charges assessed against the Owner of a Lot (or Lots) until a Residential Unit is constructed on such Lot (or Lots). Assessments may also be paid by, for and on behalf of Owners by their mortgagees under such terms and agreements as the Association may from time to time deem appropriate by action of its board of directors.

7. **Duties of the Board of Directors with Respect to Fees or Charges.**

(a) At least thirty (30) days prior to December 31 of each year, the board of directors shall, by resolution, determine the amount of the regular fee or charge. Written notice of such regular fee or charge shall be given to each Owner. Failure of the Association to give written notice of any regular fee or charge prior to December 31 of any year shall not invalidate any such fee or charge levied thereafter, nor shall failure to levy any regular fee or charge for any one year affect the right of the Association's board of directors to do so for any subsequent year. Any Owner who becomes subject to any fee or charge subsequent to December 31 of any year shall commence payment of such fee or charge on a pro rata basis commencing on the date such Owner accepts title to or takes possession of the Lot.

(b) The board of directors shall upon demand at any time furnish to any Owner liable for fees or charges hereunder a certificate in writing signed by the president or secretary of the Association setting forth whether all fees or charges have been paid to date. A reasonable charge may be made by the board of directors for the issuance of such certificate. Such certificate may be recorded in the office of the Register of Deeds for Franklin County, Kansas, and upon recording shall constitute conclusive evidence of payment of any fee or charge for the period stated in the certificate.

(c) The Association, acting by its board of directors, shall enforce payment of the fees or charges in accordance with this Declaration.

8. **Effect of Non-payment of Fees or Charges.**

(a) If any fee or charge or any part thereof is not paid on the date when due, the unpaid amount of such fee or charge shall become delinquent and shall thereupon be a continuing lien on the Lot and/or individual Residential Unit, if any, of the non-paying Owner, and the Association may, but shall not be required to, file a statement (a "**Lien Statement**") in the office of the Register of Deeds of Franklin County, Kansas, setting forth the amount due and the lien in favor of the Association, which Lien Statement may state that it covers unpaid statements occurring after the date of the Lien Statement. All such unpaid fees or charges, together with interest and any cost of collection, shall also be the personal obligation of the person who was the Owner of such Lot at the time such fee or charge became due, and shall also bind such Owner's heirs, executors, administrators, successors, and assigns. No Owner may waive or otherwise escape liability for the fees or charges provided herein by non-use of any Lot or Residential Unit, or by abandonment of such Owner's Lot or Residential Unit.

(b) If any fee or charge is not paid within thirty (30) days after becoming delinquent, the same may bear interest at a rate equal to the maximum rate on notes and bonds then allowable in the State of Kansas, or fifteen percent (15%) per annum, whichever shall be the lesser, on such fee or charge from the date it was due, if the board of directors by resolution, elects to assess interest on any such nonpaid fee or charge, together with all expenses, including attorney's fees (if and to the extent allowed by law) incurred by the board of directors in attempting to collect such fee or charge.

(c) The Association may by resolution elect to commence an action in a court of competent jurisdiction against the Owner personally obligated to pay any fee or charge, and the Owner of record of any Lot, tenant or occupant in the event such Lot or Residential Unit has been transferred, leased or occupied by a Person other than the Owner, to enforce payment of delinquent fees or charges and to foreclose the lien against the Lot. The lien against any Lot shall continue for a period of five (5) years from the date a Lien Statement is recorded in the Office of the Register of Deeds of Franklin County, Kansas, or if a Lien Statement is not so recorded, then the date of delinquency and no longer unless a foreclosure action shall have been filed. In the event such action is filed within five (5) years from the date the Lien Statement is recorded, or if not recorded within five (5) years from the date of delinquency, the lien shall continue until termination of the action and until sale of the Lot under the execution of judgment establishing the same.

9. **Subordination of the Lien to Mortgages; Notice of Nonpayment to Mortgagee.** The lien of the fees or charges, regular and special, shall be subordinate and inferior to the lien of any first mortgage now or hereafter placed upon any Lot subject to fees or charges; provided, however, that such subordination shall apply only to the fee or charge which becomes due and payable prior to the sale, whether public or private, of such Lot pursuant to a decree of foreclosure of any such mortgage or a deed in lieu of foreclosure. Such sale or deed in lieu of foreclosure shall not relieve a Lot from liability for the amount of any fees or charges thereafter becoming due, nor from the lien of any subsequent fee or charge. Any holder of a first mortgage on a Lot who acquires title to such Lot pursuant to foreclosure or deed in lieu of foreclosure shall take title free of any claims for unpaid fees or charges against the Lot which accrued prior to the date of the sale or the date title is acquired by such holder, whichever is earlier. The board of directors, whenever so requested in writing by any mortgagee or contract seller of a Lot, shall promptly, in writing, notify the mortgagee or contract seller of any default in the performance by the individual Owner or contract purchaser of any obligation under this Declaration and any then unpaid charges or fees assessed against the Lot.

10. **Exempt Property.** The following property subject to this Declaration shall be exempted from the fees, charges, and liens created herein: All property dedicated to and accepted by the City of Ottawa, Kansas, or any public utility for public use and purposes, and all Lots owned by Declarant.

ARTICLE V
INSURANCE

1. **Insurance to be Obtained and Maintained by Association.** The board of directors of the Association may obtain and maintain, to the extent reasonably available, the following:

(a) Public liability insurance, in such amounts and in such forms as may be considered appropriate by the board of directors, including, but not limited to, legal liability, hired automobile, non-owned automobile, liability for property of others, and any and all other liability incident to the duties of the Association, respectively, and such policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or the Owners; and

(b) "Directors and officers" liability insurance covering the Association in an amount determined by the board of directors to be sufficient, in its sole and absolute discretion;

(c) Such other policies of insurance as the board of directors shall from time to time determine to be necessary or desirable for the Association and the Owners.

Premiums for all insurance obtained and maintained by the Association shall be Common Expenses of the Association. All such insurance shall be for the benefit of the Association, the Owners and their mortgagees, but such insurance shall be written in the name of the Association as trustee for such benefitted parties. The board of directors shall attempt to secure insurance policies that will provide for a waiver of subrogation by the insurer as to any claims against the Association's board of directors, its manager, the Owners, and their respective tenants, servants, agents, and guests.

2. **Insurance to be Obtained and Maintained by Owners.** The Owner of any Lot on which a Residential Unit has been constructed shall have the responsibility to obtain and maintain casualty insurance, insuring all improvements located on their Lot against loss by fire, lightning, windstorm or other casualty and extended coverage in an amount considered necessary by the Owner.

ARTICLE VI
MANAGEMENT, MAINTENANCE, AND REPAIRS

1. **Manager or Managing Agent.** The board of directors may employ for the Association a management company or a manager, at a compensation established by the board of directors, to perform such duties and services as the board of directors shall authorize. No management contract or agreement shall, however, be for a period longer than three (3) years from the date of execution, and all such management contracts or agreements shall contain a provision allowing termination thereof by the board of directors at any time, with or without cause, on ninety (90) days (or less) prior written notice to the manager or management company.

2. **Maintenance, Repair, Alteration and Improvements.**

(a) **By the Association:**

The responsibility of the Association shall be as follows:

(i) Provide routine maintenance and care of all Common Areas within the Real Estate, including, without limitation, that part of the Pedestrian Path (as defined in this Declaration) located on a Common Area.

(ii) Maintain an area marker (or markers), if any, and community mailboxes, if any, for The Coves at Tallgrass and the water lines, sprinkler system, and water meter for the watering of the Common Area, if any, except to the extent such maintenance is performed by a water district or municipality.

The frequency and the materials to be used in the performance of all such routine repair, maintenance, and care shall be in the sole discretion of the board of directors of the Association and shall not be subject to the control of any Owner. In the event that the need for non-routine maintenance, repair or care, or for extraordinary services to any Lot, shall be caused by or through the negligence or willful act of an Owner, his family, guests, or invitees, the cost of such maintenance, repair or care, shall be added to and become an additional fee or charge, in addition to the fee or charge to which such Owner is subject, if any, and shall be paid by or on behalf of such Owner within thirty (30) days after written demand therefor from the board of directors of the Association, and shall be enforceable and secured by a lien as in the case of all other fees or charges.

(b) **By Individual Owner:**

The responsibility of each Owner shall be as follows:

(i) To maintain his Lot and Residential Unit and all structures, parking areas, and other improvements located thereon in the manner consistent with the The Coves at Tallgrass Standard and these Declarations, the Bylaws, and the Rules and Regulations, as defined below. Each Owner shall be responsible to irrigate his lawn and plantings, as may be necessary and to pay all water charges therefor.

(ii) To irrigate the lawn and to replace trees and plantings located on or appurtenant to the Owner's Lot with trees and plantings comparable to those for which replacement is required, even though such trees and plantings may have been planted by Declarant.

(iii) To maintain the driveway and sidewalk and Pedestrian Path (as defined in this Declaration) located upon or appurtenant to the Owner's Lot, including repair and replacement thereof, and the removal of snow, ice, and debris therefrom, and to sweep routinely, and remove leaves from, driveways, sidewalks, decks, and patios which are appurtenant to the Owner's Residential Unit.

ARTICLE VII
NEW CONSTRUCTION, IMPROVEMENTS, AND ALTERATIONS

1. **Architectural Control Committee.** There is hereby established an Architectural Control Committee, which shall consist of three (3) persons, the initial members of which shall be Roger D. Johnson, John M. McGrew, and Lance M. Johnson. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death or resignation of any member of the Architectural Control Committee, the remaining members shall have full authority to designate a successor. If, however, (i) by death or resignation of all the members of the Committee, there shall be no remaining members of the Committee who can name successors, and (ii) Declarant shall not have the power to name members of the Architectural Control Committee in accordance with paragraph 2 of Article III, and only in such events, the Owners of a majority of the

Voting Interest may elect new members of the Architectural Control Committee at an annual or special meeting of such Owners. The affirmative vote of a majority of the members of the Architectural Control Committee shall be required in order to adopt or promulgate any rule or regulation or to make any finding, determination, ruling, or order, or to issue any permit, consent, authorization, or approval pursuant to the authority contained in this Declaration.

2. **Enforcement.** The board of directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction, decisions of the Architectural Control Committee established in this Article. Enforcement shall be by proceedings at law or in equity, against any person or persons violating or attempting to violate any covenant or decision of the Architectural Control Committee either to restrain violation or recover damages, or both.

3. **New Construction.** No Residential Unit or any other building, or construction of any kind, shall be erected, placed, or performed on any Lot until construction plans and specifications, including, but not limited to, specifications on exterior materials and colors, and a plan showing the location of the structure, have been approved by the Architectural Control Committee as to type of materials, exterior colors, harmony of external design with existing structures, location of the Residential Unit on the Lot, finished grade elevation, front and side yard planting and landscaping plan. The term "construction," as used in this Article, shall include within its definition staking, clearing, excavating, and other similar site work. The Architectural Control Committee shall have complete discretion as to the extent of detail required in plans and specifications to be submitted to it, and may waive any submission requirement called for by this Article. **The Architectural Control Committee may approve several standard or prototype plans for such Residential Units and limit building plans to such standard or prototype plans.**

4. **Improvements and Alterations.** No improvements or alterations, including, without limitation, fencing, walls, sidewalks, driveways, porches, play equipment, sports equipment, decks, patios or ornamental structures or property, including, without limitation, yard lighting, gazebos, pergolas, and fountains and ponds, shall be constructed, erected, placed or performed on any Residential Unit and/or Lot without the prior written consent of the Architectural Control Committee. Fencing shall not be allowed in the "front yards" of the Lots and shall also be within any building setback lines shown on the Plat. For purposes of the foregoing sentence, the front yard of a Lot shall be deemed to be that part of the Lot between the front exterior face of a Residential Unit and the public street abutting such Lot. Furthermore, no Owner may paint or otherwise decorate or change the appearance of any exterior portion of his Residential Unit or the grade or topography of his Lot without the prior written consent of the Architectural Control Committee. No permission or approval shall be required (i) to repaint in accordance with an originally approved color scheme, (ii) to rebuild in accordance with originally approved plans and specifications, or (iii) to decorate any Residential Unit or other improvement or Lot with temporary seasonal decorations that do not constitute a nuisance or annoyance to the neighborhood or which detracts from the attractiveness of the Real Estate. Nothing herein shall be construed to limit the right of an Owner to remodel the interior of his Residential Unit or to paint the interior of his Residential Unit any color he desires.

5. **Approval or Disapproval of Plans.** The Architectural Control Committee shall have twenty (20) days following submission in writing by the owner of required plans, specifications, and other information, in which to approve or disapprove such plans and specifications, or to request additional information reasonably required by the Architectural Control Committee. If the Architectural Control Committee shall fail to approve or disapprove such plans, or to request additional information within such twenty (20) day period, the plans shall be deemed to be approved and the requirements of this Article shall be deemed to have been fully complied with. Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to the provisions of this Declaration and upon approval by the applicable governmental agency authorized to issue building permits, a copy of such plans and specifications and a copy of all building permits as approved shall be deposited among the perma-

ment records of the Association and a copy of such plans and specifications and building permits bearing such approval in writing, shall be returned to the applicant submitting the same.

6. **Limitations.** Construction or alterations in accordance with plans and specifications approved by the Architectural Control Committee shall be commenced within six (6) months following the date upon which such plans and specifications are approved, and shall be substantially complete within twelve (12) months following the date of commencement or within such longer period as the Committee shall specify in its approval. In the event construction is not commenced within such period, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. There shall be no material deviation from plans and specifications approved by the Committee without the prior consent in writing of the Committee. Approval for use on any Lot of any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove such plans and specifications or any elements or features thereof in the event such plans and specifications are subsequently submitted for use upon any other Lot or Lots.

7. **Certification of Compliance.** Upon the completion of the construction or alteration of any Residential Unit, or other improvements or structure in accordance with plans and specifications approved by the Architectural Control Committee, the Committee shall, at the request of the Owner, issue a certificate of compliance which shall be prima facie evidence that the Residential Unit, building, or other improvements or structures referred to in the certificate have been approved by the Committee and constructed or installed in full compliance with the provisions of this Article, and with such other provisions and requirements of this Declaration as may be applicable. If such completed or altered Residential Unit or improvement or structure shall fail to comply with the plans and specifications approved by the Architectural Control Committee or otherwise fails to comply with the provisions of the Declaration or any rules or regulations promulgated by the Committee, the Committee or the Association, or both, shall have the right, in addition to other rights provided in this Declaration, to record a certificate of non-compliance in the Office of the Register of Deeds of Franklin County, Kansas, setting forth the reasons or basis of the determination by the Committee that the Residential Unit, improvement or structure fails to comply and any subsequent Owner shall be bound by the certificate of non-compliance and the remedies available to the Committee or the Association, or both, under this Declaration. Nothing in this paragraph 7 shall require the Committee or the Association to record a certificate of non-compliance and the failure of the Committee or the Association, or both, to record a certificate of non-compliance shall not be deemed to be a waiver of the rights of the Committee or the Association, or both, to enforce the provisions of this Declaration. If an Owner or proposed purchaser of an Owner's interest in a Residential Unit or Lot shall desire affirmative evidence of compliance, then the Owner or proposed purchaser may seek to obtain a certificate of compliance in accordance with this paragraph.

8. **Rules and Regulations.** The Architectural Control Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval and may publish such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Architectural Control Committee, upon approval by a majority of the board of directors, may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural Control Committees shall be final except that any Owner who is aggrieved by any action or forbearance from action by the Architectural Control Committee may appeal the decision of the Architectural Control Committee to the board of directors of the Association, and, upon the written request of such Owner, shall be entitled to a hearing before the board of directors. The vote of a majority of the board of directors shall be required to reverse or otherwise modify any decision of the Architectural Control Committee.

ARTICLE VIII
EASEMENTS

In addition to easements hereinbefore or hereinafter specifically created or reserved, the following non-exclusive, perpetual easements are hereby created or reserved:

1. **Easement to Association to Perform its Duties.** An easement is hereby created in favor of the Association, permitting it to enter into or upon any Lot for the purpose of performing its powers and duties as described herein and in the Articles of Incorporation and Bylaws. The right established in this paragraph shall be exercised in a reasonable manner.

2. **Easement for Utilities.** Declarant shall have and hereby reserves easements to authorize the location, construction, maintenance and use of such portions of the Real Estate as Declarant may designate for drains, sanitary and storm sewers, gas and water mains and lines, electrical and telephone lines, cable television conduits and lines, community television antenna lines, fire warning and security systems and other utility lines and conduits for any and all purposes.

3. **Easement for Area Marker and Community Mailboxes.** An easement is hereby created in favor of the Association, permitting it to enter on, over and under the Real Estate, or any portion thereof, for the purpose of constructing, maintaining, landscaping, repairing, and replacing an area marker (or markers) displaying the name "The Coves at Tallgrass," or a name similar thereto, with approximate dimensions of any such area marker not to exceed six feet in height, by twelve feet in length, together with the right to construct and maintain electrical utility service to the area marker (or markers) for lighting. An easement is hereby further created in favor of the Association, permitting it to enter on, over and under the Lots for the purpose of constructing, maintaining, landscaping, repairing, and replacing community mailboxes.

4. **Landscape and Drainage Easement.** An easement is hereby created in favor of the Association, permitting it to enter on, over and under the Real Estate, for the purpose of maintaining and correcting landscaping and drainage of surface water, and to insure reasonable standards of health, safety and appearance. Such easement expressly includes the right to trim, cut and remove any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary for such purposes, following which the Association shall restore the affected property to its original condition to the extent reasonably practicable. The Association shall give reasonable notice of its intent to take any such action provided under this paragraph to all affected Owners unless in the sole discretion of the Association an emergency exists which must be remedied before such notice could reasonably be given. The reservation of an easement and right under this paragraph shall in no way be construed or interpreted to imply an obligation on the Association to maintain and correct the landscaping and drainage of surface water within the Real Estate, except to the extent the Real Estate is a part of the Common Area as expressly provided in this Declaration.

5. **Easement for Pedestrian Path.** A pedestrian access easement is hereby declared for the benefit of the Association and all the Owners of the Lots along, over and across the Lots for the purpose of the construction, maintenance and use of a pedestrian path as shown on the final development plan and/or Plat of The Coves at Tallgrass (the "**Pedestrian Path**"), subject to the relocation of the Pedestrian Path by Declarant, for purposes of pedestrian ingress to and egress from the Lots to Common Areas and the construction and maintenance of improvements on the Pedestrian Path. The expense of constructing and maintaining the improvements to the Pedestrian Path, if any, shall be the responsibility of the Owners on whose Lots such Pedestrian Path is located; provided, however, that an Owner's responsibility to construct and maintain the Pedestrian Path shall be limited to that part of the Pedestrian Path located on an Owner's Lot. To the extent a part of the Pedestrian Path is located on a Common Area, then the expense of constructing and maintaining that part of the Pedestrian Path located on the

Common Area shall be a Common Expenses of the Association and shall be assessed against all the Owners as provided in this Declaration, except that the costs of any repair occasioned by the misuse or negligent use of the improvements to the Pedestrian Path by an Owner shall be paid by the party causing the damage.

6. **Easements Run with the Land.** All easements and rights herein established shall run with the land, and unless specifically stated to be in gross, shall inure to the benefit of and be binding upon the Owners of all Lots and Residential Units located within the Real Estate, and their successors, heirs, and assigns, whether or not such easements are mentioned or described in any deed of conveyance.

ARTICLE IX **USE RESTRICTIONS**

1. **Land Use.** None of the above-described Real Estate or the Lots may be improved, used or occupied for other than private, residential purposes. Notwithstanding anything in this Article to the contrary, an Owner may rent any Lot to not more than two tenants, without the prior written consent of the Association; provided, however, that the restrictions on the number of tenants shall be interpreted in a manner consistent with the Fair Housing Act, 42 U.S.C. §3602, et seq., as amended, or the State act against discrimination, K.S.A. 44-1015, et seq., as amended, or any local regulation prohibiting housing discrimination.

2. **Dwelling Size and Style.** The total combined area of the first floor and all other stories, exclusive of open porches (including "screened-in" porches), decks, patios, and garages, for any Residential Unit to be constructed shall not be less than 900 square feet, all of which are finished and intended for the regular use and occupancy of the persons living in the Residential Unit.

3. **Livestock and Poultry and Pets.** No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot, with the exception of dogs, cats, or household pets so long as they are not kept, bred, or maintained for any commercial purposes and provided further that no aggressive, dangerous, or vicious dogs, including, without limitation, pit bulls or rottweiler breeds, may be kept on any Lot or within any Residential Unit. For purposes of the foregoing sentence, the board of directors shall have the authority to determine, in its sole and absolute discretion, whether a particular breed or particular pet shall be aggressive, dangerous, or vicious and therefore disallowed on the Real Estate and any such determination shall be final. No pigs, hogs or other swine will be allowed.

4. **Garbage and Refuse.** No Lot shall be used or maintained as a dumping ground for waste materials, including, without limitation, refuse, rubbish, trash, and garbage. Trash, garbage, or other waste shall not be kept on a Lot except in sanitary containers intended for such purpose.

5. **Unfinished or Damaged Residential Units.** No building shall be permitted to stand with its exterior in an unfinished condition for longer than six months after commencement of construction. In the event of fire, windstorm, or other damage, no building shall be permitted to remain in a damaged condition longer than six months after the date of damage.

6. **Exterior Paint Colors for Residential Units.** The exterior paint colors of the Residential Units, and other buildings located on a Lot, shall be limited to colors which have been approved by the Architectural Control Committee as appropriate.

7. **Nuisances and Unlawful Uses.** No noxious activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to other Owners of the Lots. Each Owner of a Lot shall refrain from making or permitting any disturbing noises by such Owner, such Owner's family,

employees, agents, visitors, licensees, lessees and pets that will interfere with the rights, comfort or convenience of the other Lot Owners. No immoral, improper, offensive or unlawful use shall be made of any Lot, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Real Estate shall be observed. The obligation of complying with requirements of governmental bodies as to the maintenance, modification or repair of any part of the Real Estate, shall be imposed on the same person who has the obligation to maintain and repair such Real Estate.

8. **Maintenance of Lots.** Each Owner shall maintain his or her Lot and Residential Unit in a sightly manner, and maintain the lawn and landscaping on his or her Lot, including, without limitation, the regular mowing and trimming, together with the removal of all debris and unsightly objects therefrom. Notwithstanding the foregoing, Owners shall be entitled to maintain compost bins for use in the breaking down of organic matter; provided, however, that such compost bins must be located in the rear yard of a Lot only.

9. **Parking in Streets.** No part of the streets shall be used for the parking of trailers, mobile homes, boats, boat trailers, equipment, machinery, or trucks, (other than pickup trucks and the equipment used in the construction of Residential Units in The Coves at Tallgrass) or vehicles not in daily use.

10. **Vehicle Repair.** No major repair, rebuilding, or maintenance of any vehicle shall be permitted except within the private enclosed garage appurtenant to a Residential Unit. No major repair, rebuilding, or maintenance of any vehicle shall be permitted in any open parking areas or on any street. The restriction in this paragraph shall pertain to, without limitation, the following: automobiles, trucks, campers, trailers, and boats.

11. **Commercial Vehicles, Campers, Camper Trailers, and Recreational Vehicles.** No trucks nor commercial type vehicles shall be parked on any street in The Coves at Tallgrass except while engaged in transportation to or from a Residential Unit, nor shall any truck or commercial-type vehicle be stored or parked on any Lot except while parked in a closed garage appurtenant to a Residential Unit. An exception to these restrictions is made for vehicles involved in the construction of Residential Units being built in the The Coves at Tallgrass. No unusable vehicles, salvage machinery, or other items of junk or salvage shall be stored, kept or parked overnight upon any Lot. Any violation of this Article IX, specifically, including, without limitation, paragraphs 9, 10 and 11 of this Article IX, or of any rules and regulations promulgated by the Association, may result in any such vehicle being towed, without notice, by the Association at the cost and expense of the Owner of such vehicle

12. **Easements.** Easements for installation and maintenance of utilities and drainage facility are reserved as described in this Declaration and as shown on the recorded Plat for the subdivision within which the Real Estate is located. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow or water through drainage channels in the easements. Except as expressly set forth in this Declaration, the easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which the Association, a public authority, or utility company, is responsible.

13. **Limitation of Restrictions.** Notwithstanding anything herein to the contrary, Declarant, and Declarant's grantees and assigns, may, while constructing and selling Residential Units, on any Lot or Lots, maintain such facilities upon the Lot or Lots as, in Declarant's sole discretion, may be necessary or convenient, including but without limitation, offices, storage areas, model units, and signs.

ARTICLE X
PARTY WALL LOTS

1. **Applicability.**

(a) The provisions of this Article X shall not apply to any Lot until and unless Declarant identifies a Party Wall Lot, or an Owner of two adjoining Lots identifies one or both of such adjoining Lots as a Party Wall Lot, by written instrument recorded in the Office of the Register of Deeds of Franklin County, Kansas, and Declarant or such Owner has, in accordance with the laws of the City of Ottawa, Kansas, constructed a Zero Lot Line Building on such Party Wall Lot.

(b) If a Zero Lot Line Building is constructed along, across or on a boundary line between two Lots, but such Zero Lot Line Building does not share a common wall with another Zero Lot Line Building on an adjoining Lot, then the provisions regarding encroachment in paragraphs 3 and 4 of this Article X shall apply, but the remaining provisions shall not apply. If the Zero Lot Line Building does share a common wall with another Zero Lot Line Building on an adjoining Lot, then all provisions of this Article X shall apply to such Lot and Zero Lot Line Building.

2. **Party Wall.** Except as expressly provided herein, each wall or part of a Zero Lot Line Building which is built as a part of the original construction upon a Party Wall Lot and placed on, along or across the dividing line between two adjoining Lots and is part of the same Zero Lot Line Building shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. A party wall easement is hereby established and reserved over that part of the Party Wall Lot and Zero Lot Line Building in which any part of the party wall is located or constructed, together with the right to restore such party wall or to restore, replace, repair, or otherwise make operable any plumbing lines, vent stacks for plumbing and heating, electricity, pipes, and conduits serving improvements using such party wall. Such party wall easement shall be a cross easement in favor of each adjoining Zero Lot Line Buildings. All provisions as described herein in regard to party walls shall, in addition, apply to patio and garage partitions when separating adjoining Zero Lot Line Buildings. The easements hereby created are and shall be perpetual, and shall be construed as covenants running with the land.

3. **Encroachment.** An exclusive, perpetual easement is hereby established and reserved for the benefit of each Party Wall Lot, as dominant tenement, and the adjoining Lot or Party Wall Lot, as the servient tenement, to the extent that the servient tenement may be encroached upon, used, or occupied by the Owner or Owners of the dominant tenement as a result of any construction errors, errors in survey, errors in platting, the design or construction of the Zero Lot Line Building on such Lot, movement or subsidence of Zero Lot Line Building or other improvements located upon any such Lot, or any portion thereof.

4. **Roof Overhang.** An easement for roof overhang purposes is hereby established and reserved on or over that part of any Lot or Zero Lot Line Building over which there exists the roof of a Zero Lot Line Building located on the adjacent Lot. This easement shall include, without limitation, an easement for the purpose of ingress and egress as may be reasonably necessary for the Owner of the dominant tenement to maintain the roof and wall adjacent to the servient tenement in accordance with this Declaration.

5. **Maintenance of Easements.** The cost of maintaining and restoring the easements provided for in this Article shall be shared equally between the Owners on either side of the party wall. All easements shall be kept in a state of good condition and repair, clean and free of rubbish and other hazards to the persons or Lot using or served by such easement.

6. **Decoration.** The Owner or Owners of each Zero Lot Line Building shall have the right, to be exercised reasonably and without jeopardizing, damaging, or otherwise adversely affecting the party wall or the Zero Lot Line Building located on the other side of the party wall, to decorate and maintain such party wall. If the party wall shall be damaged as a result of the decorating thereof by, or the negligent acts of, the Owner of the adjacent Zero Lot Line Building, or shall in any other way be damaged by such Owner, the Owner that caused any such damage shall be responsible for promptly restoring and repairing such damage at such Owner's sole cost and expense.

7. **Maintenance of Roof and Walls.** The Owner or Owners of each Zero Lot Line Building shall maintain and repair, at his or her own cost and expense, the interior walls of his or her Zero Lot Line Building, except to the extent the damage thereto shall be caused by the Owner or Owners of the adjacent Zero Lot Line Building. The roof and exterior walls of the Zero Lot Line Buildings shall be structurally maintained by the Owner or Owners thereof in a sightly and presentable condition, and all repairs thereto shall be made in a workmanlike manner, and shall in all respects conform to all laws and regulations regulating the construction of buildings in force at the time of such repair and shall be subject to the approval of the Architectural Control Committee as provided in this Declaration, but in no event shall the materials or workmanship used in such repair be of lesser quality than the present composition of such roof and exterior walls.

8. **Repair and Replacement of Roof and Exterior Walls.** No Owner or Owners of a Party Wall Lot shall repair or replace the roof or exterior walls, or any part thereof, of a Zero Lot Line Building on his or their Party Wall Lot, unless the materials used therefor are of the same composition and of equal or better quality as originally used at the time such Zero Lot Line Building was first constructed and such Owner or Owners shall have received approval from the Architectural Control Committee in accordance with the provisions of this Declaration.

9. **Water Runoff.** The Owner or Owners shall exercise reasonable care to prevent excess melting snow and rain water runoff from the roof of his or their Zero Lot Line Building onto the adjoining Zero Lot Line Building, and shall maintain the gutters, eaves, drainage system and appurtenances on his or their Zero Lot Line Building for the purpose of preventing such melting snow and rain water runoff.

10. **Appearance of Exterior Walls.** The Owner or Owners shall not paint or otherwise substantially change the appearance of any portion of the exterior of the Zero Lot Line Building (i) without the written consent of the Owner of the adjoining Zero Lot Line Building and the Architectural Control Committee; and (ii) unless the exterior of such Zero Lot Line Building shall be painted the same color, or otherwise changed in appearance in the same manner and with the same type of materials as the adjoining Zero Lot Line Building. No new exterior entrances or additions shall be made to a Zero Lot Line Building without the written consent of the Owner of the adjoining Zero Lot Line Building and the Architectural Control Committee. The Owner or Owners of each Zero Lot Line Building shall maintain in good condition and repair the exterior and interior of the Zero Lot Line Building. No Owner shall do any work or permit any condition to exist that would jeopardize the soundness or safety of the Zero Lot Line Building or reduce the value thereof, without in every such case first obtaining the consent of the Owner of the adjoining Zero Lot Line Building.

ARTICLE XI **CHANGE OF MEMBERSHIP IN ASSOCIATION**

Change of membership in the Association shall be established by recording a deed or other instrument in the Office of the Register of Deeds of Franklin County, Kansas, establishing a record title to a Lot and the delivery to the Association of a copy of such instrument. The Owner designated by such instrument shall thereby become a member of the Association, and the membership of the prior Owner shall thereby be terminated. In the event a Lot shall be sold pursuant to a contract by the terms of which the record title to the Lot shall not pass until full payment of the

purchase price has been made by the contract purchaser, an Affidavit of Equitable Interest setting forth the name of the contract purchaser and a description of the Lot sold shall be made by both the contract seller and the contract purchaser, and recorded in the Office of the Register of Deeds of Franklin County, Kansas. A copy of such Affidavit of Equitable Interest shall be provided to the Association, together with the address of the contract seller to which notices required by this Declaration or the Bylaws shall be mailed. The contract purchaser as named in such Affidavit of Equitable Interest shall thereupon be considered the Owner of the Lot described therein for all purposes of this Declaration, the Bylaws, and Rules and Regulations of the Association, and, by entering into such purchase contract, agrees to assume all obligations imposed upon the Owner of such Lot as are imposed by this Declaration, the Bylaws, and Rules and Regulations of the Association. In no event, however, shall the contract seller be released from any obligation as the Owner of the Lot described in such Affidavit until a deed conveying fee simple title to the Lot to the contract purchaser shall have been recorded in the Office of the Register of Deeds of Franklin County, Kansas, and a copy of such deed delivered to the Association. In lieu of recording a deed with the Register of Deeds, a final order entered by a court of competent jurisdiction transferring ownership of a Lot shall transfer such title, provided a certified copy of such final order is delivered to the Association. If title to a Lot shall be transferred by a transfer-on-death deed, the death of the Owner shall transfer such title as set forth in such deed, provided a certified copy of the death certificate, or other evidence of death as may be required by the Association, shall be delivered to the Association.

ARTICLE XII
ASSOCIATION DUTIES AND POWERS

1. **Duties.** The Association shall have the following duties:
 - (a) To maintain the Common Area, including, without limitation, that part of the Pedestrian Path located within the Common Area.
 - (b) If constructed, to maintain, repair and replace, a sprinkler system, water meter, water well and water lines for a sprinkler system for the Common Areas and an area marker (or markers) and community mailboxes for The Coves at Tallgrass
 - (c) To obtain and provide public liability, casualty, and other such insurance deemed necessary by the Association.
 - (d) To do and perform such other things as may from time to time be necessary to maintain the quality and appearance of The Coves at Tallgrass.
2. **Powers.** The Association shall have the following powers:
 - (a) To fix, levy, and collect fees and charges, whether regular or special, for the purpose of performing its duties under this Declaration.
 - (b) To make and enforce reasonable rules and regulations governing the use of the Real Estate and Common Areas, and the maintenance of the Lots and Residential Units in The Coves at Tallgrass, which rules and regulations shall be consistent with the rights and duties established by this Declaration.
 - (c) To take any action or perform any act authorized in this Declaration.

(d) In the discretion of the board of directors, to obtain, construct, maintain and replace a benefit unit, water meter, water lines, irrigation system, and/or water well for the purpose of irrigating the grass and landscaping located on the Common Area.

(e) To perform, carry out, and exercise any and all other powers, functions, measures, and tasks deemed necessary by the Association for the convenience, benefit, and enjoyment of the Owners, and to fix, levy, and collect any fees and charges necessary to pay the cost of any of the foregoing.

3. **Implementation of Powers and Duties.** The Association shall carry out its duties and exercise its powers pursuant to the following provisions:

(a) **Limitation Upon Liability of Association.** Notwithstanding the duty of the Association to maintain and repair parts of the properties, the Association shall not be liable to any Owner, his family, invitees, guests, or tenants, for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association.

(b) **Restraint Upon Assignment of Shares in Assets.** The share of an Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Lot.

(c) **Approval or Disapproval of Matters.** Whenever the decision of an Owner is required upon any matter, whether or not the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such Owner if in an Association meeting, unless the joinder of record Owners is specifically required by this Declaration.

(d) **Voting Rights.** Members of the Association shall be entitled to voting rights as set forth in this Declaration.

(e) **Books of Receipts and Expenditures.** The board of directors shall keep detailed accurate records, in chronological order, of receipts and expenditures affecting the Real Estate and the operations under this Declaration, and such record shall specify and itemize the maintenance and repair expenses of the Association and any other expenses incurred. Such records and any vouchers authorizing payments shall be available for examination by Owners at convenient weekday hours.

(f) **Legal Action.** The Association shall have the right and authority, but not the obligation, for and on behalf of the Owners to initiate or defend any legal action or claim arising out of their ownership of Lots, and to negotiate any settlement thereof, including, without limitation, the payment of all or any part of a claim and to levy as a special assessment upon the Owner or Owners against whom such legal action or claim shall have been asserted.

(g) **Borrow Money.** The board of directors shall have the right to borrow money to meet requirements from time to time for working capital, Common Expenses, and emergencies; however, no single loan shall exceed \$20,000.00, loans at any time outstanding shall not exceed \$100,000.00 in the aggregate, and no loan shall be entered into having a maturity date in excess of five (5) years. Any loan or loans in excess of such limits or for a longer maturity shall be made only upon the approval, in person or by proxy, of at least sixty-six percent (66%) of the Voting Interest of the Members at an annual or special meeting of the Members.

ARTICLE XIII
LOTS SUBJECT TO DECLARATION,
BYLAWS, AND RULES AND REGULATIONS

All present and future Owners of Lots, and tenants and occupants of the Residential Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws of the Association, and Rules and Regulations of the Association, as they may be amended from time to time. The acceptance of a deed or conveyance, or the entering into of a lease or occupancy of any Lot or Residential Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Lot and/or Residential Unit situated thereon, as though such provisions were recited and stipulated at length in each and every deed, conveyance, or lease thereof. An Owner shall automatically be a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Failure of an Owner to comply with this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time, shall entitle the Association or other Owners to the following relief, in addition to the remedies that may be provided by law:

(a) **Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, or the Rules and Regulations of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the further right by two-third's vote of its entire board of directors to levy fines up to and including One Hundred Dollars (\$100.00) for each violation, against any Owner who has breached or threatens to breach any of the provisions of this Declaration, the Bylaws of the Association, or the Rules and Regulations of the Association, and to charge such fine as an additional assessment against such Owner.

(b) **Negligence.** An Owner shall be liable for the expense of any maintenance, repair, or replacement to or of the Real Estate, or any Lot or Residential Unit, including his own, rendered necessary by his negligence or carelessness or intentional act, or by that of any member of his household, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not fully covered by the proceeds of insurance carried by the Association.

(c) **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged failure of an Owner to comply with the terms of the Declaration, the Bylaws, or the Rules and Regulations of the Association, as they may be amended from time to time, the Association shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be incurred by the Association.

(d) **Abating and Enjoining Violations by Owners.** The violation of any of the Rules and Regulations adopted by the board of directors, or the breach of any Bylaw, or the breach of any provision of this Declaration, shall give the board of directors the right, in addition to any other rights set forth herein: (a) to enter on or in the Lot or Residential Unit on or in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the board of directors shall not thereby be deemed guilty in any manner of trespass; and/or (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(e) **Remedies Cumulative.** All rights, remedies and privileges granted to the Association or the Owners, or any Owner, pursuant to the terms, provisions, covenants, or conditions of this Declaration, the Bylaws or the Rules and Regulations of the Association, shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges as may be available to such party at law or in equity.

ARTICLE XIV
AMENDMENT

1. **Amendments to Declaration.** Amendments to this Declaration, including, without limitation, any changes, modifications, deletions of existing provisions, additions of new covenants and provisions, and terminating this Declaration in its entirety (collectively, "**Amendment or Amendments**"), shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a majority of the Association's board of directors prior to its adoption by the Association Members. Amendments may be adopted at a meeting of the Association Members upon the approval thereof of sixty-six percent (66%) of the Voting Interest of the Association Members entitled to vote at such meeting, or without any meeting if all Association Members have been duly notified and if sixty-six percent (66%) of the Voting Interest of the Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment. In all events, the Amendment when adopted shall either (i) be executed by all the Members who approved of such Amendment, or (ii) bear the signature of the President of the Association and shall be attested by the Secretary, who shall state whether the Amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording of the Amendment to Declaration in the appropriate governmental offices.

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

3. **Required Approvals.** Notwithstanding any provision of this Article XIII to the contrary, until the expiration of the Marketing Phase, this Declaration may not be amended by the Association Members pursuant to this Article XIII without the written consent of Declarant, which may be withheld for any reason,

4. **Declarant's Right to Amend.** Notwithstanding any other provision of this Article XIII, until the expiration of the Marketing Phase, Declarant reserves the right to amend this Declaration without the approval of the Association's board of directors, the Association Members or any Owner or other Person; provided, however, that no such Amendment shall have the effect of changing the Plat of an Owner's Lot without the consent of the Owner.

ARTICLE XV
MISCELLANEOUS PROVISIONS

1. **Severability.** The invalidity in whole or in part of covenants or restrictions, or any paragraph, subparagraph, sentence, clause, phrase or word, or other provision of this Declaration shall not affect the validity of the remaining portions thereof.

2. **Notices.** Unless otherwise provided in this Declaration, all notices or other communications under this Declaration shall be in writing and shall be deemed to have been duly given if delivered personally, or if sent, postage prepaid, by United States mail:

(a) If to an Owner, at the address which the Owner has designated in writing and filed with the Association or, if no such address has been designated, at the address of the Residential Unit of such Owner; or

(b) If to the Association, at the principal office of the Association or the Managing Agent, if any, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this paragraph.

3. **Captions.** The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, modify, or supplement this Declaration or the intent of any provision thereof.

4. **Construction.** Whenever the context so permits, the use of plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

ARTICLE XVI **USE OF TAX INCREMENT FINANCING PROCEEDS**

Each Owner acknowledges that the Property is or will be part of a tax increment financing ("TIF") project within a TIF district in accordance with K.S.A. 12-1770 et seq. (the "**TIF Act**"), as amended from time to time. Each Owner acknowledges and agrees that the real estate taxes and/or special assessments on the Lots that are paid by the Owners are contributed in part to fund eligible expenses, as specified by the TIF Act and that certain Redevelopment Agreement between Declarant or related entity and the City of Ottawa, Kansas (the "**City**"). Each Owner acknowledges that a copy of the Redevelopment Agreement (whether one or more, as amended from time to time) are available for review in the Office of the City Clerk of the City. Notwithstanding anything in this Declaration to the contrary, and subject to the terms of the Redevelopment Agreement, if in any calendar year: (1) any special assessments are assessed and paid by any Owner of a Lot or Residential Unit for special improvements within the TIF project that constitute "redevelopment project costs" under the K.S.A. 12-1770a(o), as amended; and (2) TIF proceeds are available to reimburse such special assessments after payment of all other "redevelopment project costs" that, under the terms of the Redevelopment Agreement, have a higher repayment priority than the special assessments, then such special assessments may be refunded to the Owners who paid such assessments, to the extent TIF proceeds are available, all in accordance with this Article. To be eligible to receive a refund from TIF proceeds, each Owner shall remit to the Association, within fifteen (15) days after payment of the Owner's taxes and special assessments, a copy of such Owner's bill or invoice for the payment of special assessments, together with a copy of payment of such special assessments (or other proof of payment as may be required by the City, the Association or the Declarant, together, "**Proof of Payment**"), at the time such payments are sent to the taxing authority. The Association shall, within a reasonable time (as determined by the board of directors) after the due date of such special assessments, remit to the City a request for reimbursement of the special assessments as evidenced by the Proofs of Payments that the Association has received from the Owners. Upon receipt of reimbursement from TIF proceeds, the Association will cause such proceeds to be refunded to the Owners who submitted a Proof of Payment on a pro-rata basis with the amount of special assessments paid by each Owner submitting a Proof of Payment. To the extent allowed by law, the failure of an Owner to submit a Proof of Payment as required by this Article shall be a waiver by such Owner to share in any of the reimbursement proceeds. The Association is hereby authorized to hire an accountant or other professional to manage the reimbursement of special assessments paid with TIF proceeds, and the Association may levy an assessments under Article XII to cover the cost of such services. Each Owner may elect to apply a portion of the reimbursements received from TIF proceeds to cover such assessment. Nothing in this Article shall be construed as a guaranty by either the Declarant or the Association of either the reimbursement of special assessments paid or of sufficient TIF proceeds, and neither the Declarant nor the Association shall have any duty to apply TIF proceeds to the repayment of special assessments other than those duties imposed by the Redevelopment Agreement and the TIF Act.

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IN WITNESS WHEREOF, this Declaration of Covenants, Conditions and Restrictions is hereby duly authorized and executed.

MARAIS DES CYGNES OVERLOOK, L.L.C.,
a Kansas limited liability company

BY: BLUEJACKET FORD, L.L.C.,
a Kansas limited liability company,
ITS: MANAGER

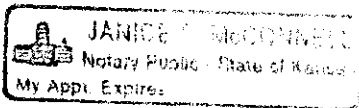
BY: 
John M. McGrew, Manager

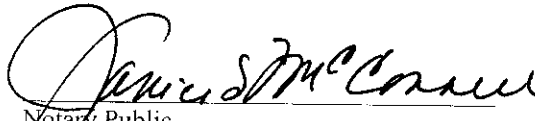
ACKNOWLEDGMENT

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 16th day of January, 2008, before me, the undersigned a notary public in and for the county and state aforesaid, came John M. McGrew, Manager of Bluejacket Ford, L.L.C., a Kansas limited liability company, as Manager of Marais des Cygnes Overlook, L.L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed the within and foregoing Declaration, and such person duly acknowledged the execution of the same on behalf of said limited liability company.

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




Notary Public

My appointment expires April 8, 2011

EXHIBIT A

[Legal Description]

BEGINNING AT A ½" IRON PIN AT THE NORTHWEST CORNER OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 30, TOWNSHIP 16 SOUTH, RANGE 20 EAST OF THE 6TH PRINCIPAL MERIDIAN, FRANKLIN COUNTY, KANSAS; THENCE NORTH 88 DEGREES 26 MINUTES 01 SECONDS EAST FOR A DISTANCE OF 250.00 FEET ALONG THE NORTH LINE OF SAID QUARTER SECTION TO ½" IPE, THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 88 DEGREES 26 MINUTES 01 SECONDS EAST FOR A DISTANCE OF 1202.02 FEET ALONG SAID NORTH LINE TO A ½" IRON PIN AT THE NORTHEAST CORNER OF THE WEST HALF OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE ALONG THE EAST LINE OF SAID WEST HALF SOUTH 01 DEGREES 53 MINUTES 52 SECONDS EAST FOR A DISTANCE OF 1328.09 FEET TO A ½" IRON PIN AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID QUARTER SECTION; THENCE DEPARTING SAID EAST LINE SOUTH 88 DEGREES 19 MINUTES 00 SECONDS WEST FOR A DISTANCE OF 681.00 FEET ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID QUARTER SECTION TO A ½" IRON PIN; THENCE NORTH 01 DEGREES 53 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 674.48 FEET PARALLEL WITH SAID EAST LINE TO A ½" IRON PIN; THENCE SOUTH 88 DEGREES 26 MINUTES 01 SECONDS WEST FOR A DISTANCE OF 773.77 FEET PARALLEL WITH SAID NORTH LINE TO A POINT ON THE WEST LINE OF SAID SOUTHWEST FRACTIONAL QUARTER; THENCE ALONG SAID WEST LINE NORTH 01 DEGREES 39 MINUTES 24 SECONDS WEST FOR A DISTANCE OF 280.00 FEET TO A ½" IRON PIN; THENCE DEPARTING SAID WEST NORTH 88 DEGREES 26 MINUTES 01 SECONDS EAST FOR A DISTANCE OF 250.00 FEET PARALLEL WITH SAID NORTH LINE TO A POINT; THENCE NORTH 01 DEGREES 39 MINUTES 24 SECONDS WEST FOR A DISTANCE OF 375.00 FEET PARALLEL WITH SAID WEST LINE TO THE TRUE POINT OF BEGINNING; TOGETHER WITH AND SUBJECT TO COVENANTS, EASEMENTS, AND RESTRICTIONS OF RECORD. SAID PROPERTY CONTAINS 30.24 ACRES OR 1,317,068 SQUARE FEET MORE OR LESS IN FRANKLIN COUNTY, KANSAS. AS SHOWN ON SURVEY BY TODD B. BURROUGHS, LS-1187, DATED DECEMBER 20, 2002;

ALSO DESCRIBED AS LOTS ONE (1) THROUGH ONE HUNDRED FORTY-ONE (141), INCLUSIVE, OF THE COVES AT TALLGRASS, A SUBDIVISION IN THE CITY OF OTTAWA, AS SHOWN BY THE RECORDED PLAT THEREOF, IN FRANKLIN COUNTY, KANSAS.