

DECLARATION OF  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
OF  
ARBOR VALLEY

THIS DECLARATION, made this \_\_\_\_ day of \_\_\_\_\_, 2023, by Jose A. Marquez and Laura Y. Marquez a/k/a Laura Y. Ortega Avitia, husband and wife; Solid Builders, LLC, a Kansas limited liability company; Francisco Javier Marquez; and Grupo Cafrima LLC, a Texas limited liability company (each a “Declarant” and collectively, the “Declarants”).

W I T N E S S E T H:

WHEREAS, Declarants are the owners of certain real property located in “Arbor Valley”, Valley Center, Sedgwick County, Kansas, which real property is more particularly described on Exhibit A, attached hereto and incorporated herein (collectively, the “Addition”);

WHEREAS, it is necessary to establish binding conditions and restrictions applicable to the Addition to insure the proper development thereof and adequate maintenance and government of the Common Area and the rights of property owners and residents in the Addition;

WHEREAS, it is the purpose and intention of this Declaration that the Addition, except as otherwise provided herein, shall be held and/or conveyed subject to the conditions and restrictions contained in this Declaration;

WHEREAS, there shall be established the Arbor Valley Homeowner Association (the “Association”), consisting of the owners of all lots included within the Addition, the principal purposes of which will be to be responsible for the maintenance of certain Common Area as

hereinafter described and the exercise of such powers as set forth in this Declaration; and

WHEREAS, Declarants may, but shall not be required to, convey additional real property to the Association.

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

## ARTICLE 1

### Association Membership and Voting Rights

Section 1.01. Formation; Powers and Duties of Association. The Association shall be organized as a nonprofit corporation for a perpetual term under the laws of the State of Kansas. The Association has the rights and powers as set forth in its Articles and Bylaws, together with such powers that are necessary to carry out the rights, responsibilities, and duties of the Association under this Declaration, with the sole exception of those powers specifically reserved by this Declaration to the DC. The Association shall have the right to assign all or part of its rights and duties under this Declaration to any one or more persons, corporations, associations, or outside consultants.

Section 1.02. Membership. “Owner(s)” means the fee owner or owners, as the context may require, of all or any part of one or more Lots (as defined below), but not including fee owners who have sold their interest under executory contract (during such time as an executory contract is in force, the contract vendee shall be considered to be the Owner). Membership in the Association shall be mandatory for each Owner, and “Member” shall be defined as every person or entity who or which is an Owner. Membership is appurtenant to, and may not be separated from, the ownership of any Lot. Except as otherwise provided in this Declaration, the rights, duties, privileges, and obligations of all Members are set forth in: (i) this Declaration, as amended from time to time; (ii) the Articles of Incorporation of the Association, as amended from time to time (collectively, the “Articles”), (iii) the Bylaws of the Association, as amended from time to time (collectively, the “Bylaws”); and (iv) the Rules (as defined below).

Section 1.03. Definition of “Lot”. The word “Lot”, as used herein, shall mean a lot as set forth in the recorded plat of the Addition; provided that where property has been attached or detached from any Lot (including but not limited to by means of a lot split, lot line adjustment, or deed or other similar conveyance), the enlarged Lots and/or the diminished Lots shall be deemed to be a “Lot”; provided, further, two or more Lots which are combined into a single home site

shall be deemed to be one “Lot” for the purpose of computing voting rights and liability for maintenance charges hereunder.

Section 1.04. Voting Rights. There shall be one (1) vote for each Lot. When more than one person holds an interest in any Lot, all such persons shall be Owners, but such Owners will collectively be entitled to only one (1) vote for each Lot. The votes for such Lot shall be exercised as the Owners of such Lot may determine among themselves, and if such Owners cannot jointly agree as to how that vote(s) should be cast, no vote will be allowed with respect to such Lot. Notwithstanding the foregoing, a Declarant shall be entitled to fifty (50) votes for each Lot of which it is the Owner.

Section 1.05. Initial Operation. Notwithstanding anything in this Declaration to the contrary, Declarants shall maintain absolute and exclusive control over the Association and the DC (as defined below), including appointment and removal of all officers of the Association, all members of the Board (as defined below), and all members of the DC, until the date that is one hundred eighty (180) days after the Declarants collectively own less than five percent (5%) of the Lots. Until such time, only the Declarants will be entitled to cast any votes with respect to the election and removal of Association officers or members of the Board, members of the DC, or any other matter requiring the vote or approval of Members. A Declarant voluntarily may (but shall not be required to) at any time relinquish, by means of a written instrument, all or any part of Declarant’s control and rights under this Section without affecting any rights of control not relinquished or any rights of another Declarant.

Section 1.06. Board of Directors. All actions of the Association shall be taken on its behalf by the Board of Directors (the “Board”), except for when a vote of the Members is specifically required by this Declaration, the Articles, or the Bylaws. Members of the Board shall be elected at such intervals and pursuant to the procedures set forth in Section 1.05 of this Declaration, the Articles, and Bylaws, except that members of the first Board shall be appointed by the Declarants. Except for members of the Board appointed by Declarants or elected by the Declarants as provided for in Section 1.05, each member of the Board shall be an Association Member.

Section 1.07. Approval by Members. Any provision of this Declaration or the Bylaws which requires the vote or written assent of a specified majority of the voting power of the Association shall be determined in accordance with the provisions for voting set forth in the Bylaws.

Section 1.08. Indemnification. To the fullest extent permitted by law, every member of the Board, every officer of the Association, the members of the DC, and Declarants (to the extent a claim may be brought against the Declarants by reason of their appointment, removal, or

control over members of the Board or the DC) shall be indemnified by the Association, and every other person serving as an employee, or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him, her, or it in connection with any proceeding or any settlement thereof to which he, she, or it may be a party, or in which he, she, or it may become involved, by reason of his, her, or its being or having served in such capacity on behalf of the Association whether or not he, she, or it is a member of the Board, an officer of the Association or the Addition, or a member of the DC, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Board shall determine, in good faith, that such member of the Board, officer of the Association, member of the DC, Declarants, or other person did not act, fail to act, or refuse to act willfully, fraudulently, criminally, or with gross negligence in the performance of his, her, or its duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled at law or otherwise.

Section 1.09. Non-Liability of Officials. To the fullest extent permitted by law, neither Declarants, officers of the Association, members of the Board, nor members of the DC shall be liable to any Member or any Owner, occupant, or other person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, or negligence, made in good faith and believed to be within the scope of his, her, or its duties.

Section 1.10. Association Rules. In order to be able to address specific matters relating to the administration, operation, and development of, or other matters relating to, the Addition, the Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems appropriate, including but not limited to those rules and regulations specifically described elsewhere in this Declaration (collectively, the "Rules"); provided, however, that the Board shall comply with the procedures set forth in the Bylaws in adopting, amending, or repealing the Rules. The Rules may, but are not required to, include the establishment of a system of fines and penalties enforceable as assessments. The Rules shall not be inconsistent with the terms of this Declaration, and may not unreasonably or unlawfully discriminate among Members. The Rules shall have the same force and effect as if they were set forth in and were part of this Declaration, and shall be binding on the Owners and Members, and all other persons having any interest in, or making any use of, the Association, whether or not actually received thereby. The Rules, as adopted, amended, or repealed, shall be available at the principal office of the Association to each Owner, Member, or other person entitled thereto, upon request. To the extent of any conflict between any provision of the Rules and any provision of this Declaration, this Declaration shall control.

Section 1.11. Insurance. The Association may maintain insurance coverage, including, but not limited to, hazard, blanket fidelity bonds for all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of or administered by the Association, including officers, employees and agents of a management agent, directors' and officers' liability, flood insurance when required to comply with applicable law, and public liability insurance in such amounts and with such coverage as shall be required by the Board. The premiums for any insurance obtained by the Association under this Section shall be included in the assessments as defined in Article 3.

## ARTICLE 2

### Common Area

Section 2.01. Easement in Common Area. There may be conveyed to the Association certain reserves to be held as "Common Area", said term to describe such property held by the Association, as the context requires. Subject to the regulations set forth in Section 2.02 below, each of the Declarants hereby dedicate and convey to each Member a right and easement of enjoyment in and to the Common Area described hereafter. Said easement shall not be personal but shall be considered to be appurtenant to said Lots, whether specifically set forth in deeds to the Lots or not. Declarants hereby covenant for themselves, their successors and assigns, that they will convey fee simple title to the Common Area to the Association. The Association shall have the right to suspend the rights of any Member in connection with the Common Area for any period during which any assessment remains unpaid and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

Section 2.02. Regulations. The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the Common Area, including the right to restrict or limit uses of certain portions of the Common Area, which regulations shall be binding upon the Members and all residents of the property subject to this Declaration.

Section 2.03. Description of Common Area. The Common Area to be conveyed to the Association is the real property legally described on Exhibit B, attached hereto and incorporated herein. The Common Area will also include all improvements and fixtures situated, or to be situated, on such reserves. Each platted reserve within the Common Area may be used for the

purposes set forth on the recorded plat of the Addition. The Common Area may also be used for other uses for the benefit of the Members, as those other uses may be determined by the Association from time to time. All Members in good standing, their families, and guests accompanying said Members shall have equal access to the Common Area and all facilities located thereon, subject to rules and regulations established by the Association, including but not limited to the right to place limitations on the number of guests, and the right to limit or exclude Members, their families, and their guests if the Members owning the Lot in which they reside are in default in the payment of assessments or in the performance of any other obligation required by this Declaration. The Association shall be responsible for payment of taxes and insurance on the Common Area and the management, control, maintenance and repair of the Common Area and improvements and fixtures thereon.

Section 2.04. Reservation of Rights in the Common Area. Notwithstanding any other provision of this Declaration, Declarants (and, after Declarants have transferred ownership of the Common Area to the Association, the Association) reserves the right to: (a) grant easements within the Common Area for the installation, repair, and maintenance of water mains, sewers, drainage courses, public walkways, and other public utilities, provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the Common Area; and (b) the right to construct improvements on the Common Area. Declarants shall have the further right during the development of the Addition or nearby areas to alter and reconfigure Common Area to accommodate developmental concerns that may arise from time to time, and the Association shall cooperate in such efforts.

Section 2.05. Amenity Mortgage Financing. Before conveyance of the Common Area to the Association, Declarants shall have the authority to mortgage the Common Area in order to secure the cost of installing or constructing amenities within the Common Area (provided all Declarants approve such mortgage). The Association shall have the right to mortgage any part, parts, or all of the Common Area in connection with the borrowing of money in the furtherance of any of its purposes authorized in this Declaration, its Articles, or its Bylaws, including but not limited to the construction of improvements on the Common Area, and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder.

### ARTICLE 3

#### Assessments

Section 3.01. Assessments. All of the Lots shall be subject to annual assessment charges to be paid by the respective Owners thereof to the Association, quarterly, in advance on the 1st day of each quarter, in each year, provided however, the Board may permit the annual assessment

charge to be paid either monthly, semiannually or quarterly. Notwithstanding the foregoing, a Declarant shall not be obligated to pay any assessment for any Lot owned by such Declarant until such time as a home has been erected thereon and is ready for occupancy. Nor shall any Builder designated by Declarants as an Arbor Valley Approved Builder be obligated to pay any assessment for any Lot owned for the purpose of building a spec home or model home until such time as a home has been erected thereon and sold for occupancy. Assessments will begin accruing on the date of the Lot closing for the Owner.

Section 3.02. Determination of Assessments. Each year the Board shall, prior to November 1, determine the total amount to be raised by its annual assessment charges for the next succeeding year and such annual assessment charges shall be considered and approved in accordance with the applicable provisions set forth in the Bylaws. This sum so determined shall be divided by the total number of Lots subject to assessment, and each such Lot shall be assessed an equal amount. Should the Board at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and management of the Association and care of the Common Area, or in the event of emergencies, the Board shall have the authority to levy such additional assessments considered and approved in accordance with the applicable provisions set forth in the Bylaws.

Section 3.03. Use of Association Dues Assessments. The assessment fund shall be used for such of the following purposes as the Association shall determine necessary and advisable: for improving (including, but not limited to construction of capital improvements) and maintaining the Common Area and other property of said Association; for planting trees and shrubbery and the care thereof; for expenses incidental to the proper operation and maintenance of any recreational facilities located within the Common Area; for collecting and disposing of garbage and rubbish; for employing night watchmen; for caring for vacant property; for removing grass or weeds; for street cleaning; for street signs, street lights, and snow removal; for constructing, purchasing, maintaining, or operating any community service including publishing a directory of the membership of said Association; for purchase of insurance; for doing any other thing necessary or advisable in the opinion of said Association for the general welfare of the Members; for expenses incidental to the enforcement of this Declaration; for the payment of operating expenses of said Association; or for any other purpose within the purposes for which said Association is incorporated.

Declarants may install a perimeter privacy wall along portions of the Addition and may install landscaping and sprinkler systems on either side thereof as Declarants may in their sole discretion determine. In the event of the installation of such wall, landscaping or sprinkler systems, the future maintenance, repair and replacement thereof and all monuments and logos, shall be the responsibility of said Association, which shall further be responsible for the maintenance and care of those portions of the public rightofway abutting the Addition lying

between the traveled portions of the rightofway and said wall or any platted Lot lines. The same shall be maintained by the Association free from weeds and rubbish and otherwise comparable to other landscaped portions of Common Area in the Addition.

The Board shall be obligated to expend such portion of the assessment fund as shall be necessary in order to maintain the Common Area in a first class condition and shall not have the authority to reduce standards of maintenance below such level without the vote of twothirds (2/3) of all Members.

Section 3.04. Interest on Delinquent Assessments. All assessment charges which shall remain due and unpaid thirty (30) days after they are due shall thereafter be subject to interest at the rate of fifteen percent (15%) per annum or at such other rate as established by the Board, provided however, the interest rate shall not exceed the maximum interest rate allowed by law.

Section 3.05. Lien for Delinquent Assessments. It is expressly understood and agreed that the annual assessment charges shall be a continuing lien and encumbrance on the Lot with respect to which said charge is made, and it is expressly agreed that by the acceptance of title to any of said Lots, the Owner (not including thereby the mortgagee as long as it is not the Owner) from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all charges provided for herein which were then due and unpaid to the time of acquiring the title thereto and all such charges thereafter falling due during his ownership thereof. By acceptance of title to a Lot, the owner thereof waives the homestead exemption provided by Kansas law and Article 15, Section 9 of the Kansas Constitution as to such lien and consents to such lien. The lien may be foreclosed by the Association in the same manner as a mortgage lien upon the Lot, provided the foreclosure action is commenced within five years after a notice of nonpayment (“Notice of Nonpayment”) is recorded in the Office of the Register of Deeds of Sedgwick County, Kansas. If the Assessment is not paid within five years after the Notice of Nonpayment is recorded, the Association may record an additional Notice of Nonpayment, may continue to record Notices of Nonpayment for additional five-year time periods and may combine unpaid Assessments for separate years in a single Notice of Nonpayment, so the Association might thereby preserve its lien rights until full payment of all Assessments. The lien shall expire unless an additional Notice of Nonpayment is timely filed or an action to foreclose it is timely commenced. A certificate in writing issued by either the Association or its agent shall be given on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which shall set forth the status of said charges. This certificate shall be binding upon said parties.

Section 3.06. Subordination of Assessment Lien. The lien provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot, which is subject to any mortgage, pursuant to a

decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, however, shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3.07. Right of Association to Enforce Payment of Assessment No Offset. By the acceptance of title, each Owner shall be held to vest in the Association the right and power in its own name to take and prosecute all suits, legal, equitable, or otherwise, which may in the opinion of the Association be necessary or advisable for the collection of such charge or charges, and the Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing its rights hereunder. All assessments shall be payable in the amount specified and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Association or Declarants are not properly exercising their duties and powers as provided in this Declaration.

Section 3.08. Maximum Annual Assessment.

a. The initial annual total assessment for the Association (except for such sums assessed pursuant to Sections 3.09 and 3.10 hereof), shall be determined by Declarants. The maximum annual assessment may be increased for any subsequent year to an amount which is no more than twenty percent (20%) compounded above the maximum permitted annual assessment for the previous year without a vote of the membership of the Association.

b. The annual assessment for any year commencing after the year in which the first annual assessment is levied, may be increased to an amount greater than that permitted by Subsection "a" of this Section only by an affirmative vote of two-thirds (2/3) of the vote of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose.

c. The Board may fix the annual assessment at an amount not in excess of the maximum amounts set forth in this Section.

Section 3.09. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose. The special

assessment shall be divided by the total number of Lots subject to assessment, and each such Lot shall be assessed an equal amount. A Declarant owned Lot shall not be subject to any special assessments until such time as a home has been erected on such Lot and is ready for occupancy. Nor shall any Lot owned by a Builder designated by Declarants as an Arbor Valley Approved Builder be subject to any special assessment unless a home has been erected thereon and sold for occupancy.

Section 3.10. Additional Assessments. In addition to the sums assessed pursuant to other Sections hereof, there shall be assessed against each Lot a fee in the amount of Two Hundred Fifty Dollars (\$250) per year for mowing and maintenance of the Lot, which assessment shall commence as to each Lot on such date that is ninety (90) days after the purchase of the Lot from a Declarant, and which assessment shall terminate as to each Lot as of the date of commencement of construction of a residence thereon. The Board shall have the power and authority to increase this assessment from time to time, as deemed necessary by the Board, in its sole discretion and without requiring an amendment to the Declaration.

## ARTICLE 4

### Covenants for Maintenance

Section 4.01. Maintenance. Each Owner (other than a Declarant during the period of Declarant control described in Section 1.05 above) shall keep all Lots owned by such Owner and all improvements therein or thereon in good order and repair, including, but not limited to, the seeding, watering, and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate exterior care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If in the opinion of the DC (as defined below), any Owner fails to perform the duties imposed by the preceding sentence, the Association, after approval by the Board and after fifteen (15) days' written notice to such Owner to remedy such default, shall have the right, through its agents and employees, to enter upon the Lot or Lots involved and to repair, maintain, repaint, remove, and restore such Lot or Lots or such improvements, and the cost thereof (the "Maintenance Charge") shall be a binding personal obligation of such Owner and the cost may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question, provided the foreclosure action is commenced within five years after the recording of a notice of nonpayment (as described below), in the following manner: the Association may record an Affidavit of Nonpayment of Maintenance Charge in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property, and (c) the amount of the Maintenance Charge which is unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and

such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the property, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.

Section 4.02. Environmental Requirements. In order to comply with applicable federal, state, and local environmental laws and rules and regulations, and to promote the environmental condition of Arbor Valley, each Owner is hereby bound to the following requirements:

- a. No herbicides, pesticides or fertilizers will be applied to the earth's surface until vegetation has reached a good stand.
- b. Subsequent to this establishment of vegetation, any application of herbicides, pesticides or fertilizers will be in strict accordance with the Environmental Protection Agency or the Kansas Department of Health and Environment requirements which may be in place at that time.
- c. In the event a spill of toxic materials occurs on the property, the Owner will agree to contact the appropriate government agency and to clean up such spills in accordance with the Kansas Department of Health and Environment requirements.
- d. No materials or substances such as paints, petroleum products, solvents, detergents, concrete drum wash water or other liquids will be disposed in the storm sewer system or into any drainage way.

## ARTICLE 5

### Architectural Control

Section 5.01. Approval Required.

- a. No building, fence, wall, structure, projection from a structure, or improvement shall be commenced, erected, or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein or thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to (i) harmony of external design and location in relation to and effect upon surrounding structures, topography and the overall community design of the Addition; (ii) the character of the exterior materials; and (ii) the quality of the exterior workmanship, by the Design Committee (the "DC"), its agents,

assignees, or successors. In the event the DC fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to and received by it, approval with respect to the submitted plans and specifications will not be required, and this Article will be deemed to have been fully complied with. The applicant may appeal an adverse Design Committee decision to the Board, which may reverse or modify such decision by a 2/3 vote of those directors present and voting at a meeting at which a quorum is present.

b. The DC may, subject to the approval of the Board, develop and promulgate policy guidelines for the application of the design review provisions in this Declaration. The policy guidelines shall include, but not be limited to (a) review procedures, (b) aspects and objectives of review, and (c) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design practices that, though optional, are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered. The policy guidelines are intended to assist the DC and the Owners in the ongoing process of community design. They may be modified and supplemented from time to time, on due notice to the Owners and subject to the approval of said Board.

c. The provisions of Section 5.01 shall be applicable to a Declarant only with respect to Lots which are improved with buildings which are or have been occupied.

Section 5.02. Form of Plans and Specifications. Such plans and specifications shall be in such form and shall contain such information as may be required by the DC, including, but not limited to (a) a site plan of the Lot or Lots showing the nature, exterior color scheme, kind, shape, height, materials, and location with respect to the particular Lot or Lots (including proposed front, rear, and side setbacks) of all structures, the location thereof with reference to structures on adjoining portions of the property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (b) a grading plan for the particular Lot or Lots.

Section 5.03. Retention of Approved Plans and Specifications. Upon approval by the DC of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Association, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Section 5.04. Removal and Alteration of Structures; Lien.

a. If any structure shall be altered, erected, placed, or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the DC (or deemed approved) pursuant to the provisions of this Article, such alteration, erection, maintenance, or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein, and, upon written notice from the DC, any such structure so altered, erected, placed, or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation.

b. If fifteen (15) days after the notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association or the DC shall have the right, through their agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the cost thereof shall be a binding, personal obligation of such Owner and the cost may mature into a lien (enforceable in the same manner as a mortgage, provided the foreclosure action is commenced within five years after a the recording of an affidavit (as described below)) upon the Lot(s) in question in the following manner: The Association or the DC may record an Affidavit of Nonpayment of Removal or Alteration Charges in the Office of the Register of Deeds of Sedgwick County, Kansas, stating (i) the legal description of the property upon which the lien is claimed, (ii) the name(s) of the Owner(s) of said property, and (iii) the amount of the Removal and Alteration Charges which are unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the property whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

c. In the event a lien is obtained pursuant to this Section and thereafter the Removal or Alteration Charges, plus interest at the rate of fifteen percent (15%) per annum, or such other rate as is established by the Board, shall be fully paid, the Association or the DC shall, within ten (10) days following payment, file with the Register of Deeds of Sedgwick County, Kansas, an Affidavit of Payment of Removal or Alteration Charges, which Affidavit shall (i) refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied, (ii) state the legal description of the property affected, and (iii) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Removal or Alteration Charges shall fully and completely release the lien referred to in said Affidavit, and said Affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the preexisting lien has been fully and completely released and

discharged.

d. In the event of any transfer, sale, or assignment of any Lot or Lots to a bona fide purchaser, and in the event that no Affidavit of Nonpayment of Removal or Alteration Charges has been recorded as provided in this Section prior to such transfer, sale or assignment, any such Affidavit associated with the period prior to the above-referenced transfer, sale or assignment, but filed subsequent to the abovereferenced transfer, sale or assignment shall be invalid and unenforceable.

Section 5.05. Right of Inspection. The Association or any of its agents may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and neither the DC, the Association, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

Section 5.06. No Liability. Neither the DC, Declarants, the Association, nor any officer, director, member, agent, or employee thereof, shall be liable to any Owner or to any person, firm, corporation, or other entity for any damages arising from any performance or nonperformance of any duties or functions under this Article.

Section 5.07. Membership. The original members of the DC shall be three persons to be appointed by the Declarants. Upon the death or resignation of any member of the DC, Declarants shall appoint a successor, unless at such time Declarants have relinquished their rights to appoint members of the DC pursuant to Section 1.05, in which case the Board shall have full authority to designate a successor. The act of a majority of the DC shall be binding, and the DC, with approval of the Board, may assign all or part of the DC's rights and duties under this Declaration to any one or more persons, corporations, associations, or outside consultants.

Section 5.08. Fee for Architectural Review. Each Owner may be required to pay a fee to the Association as a condition to approval of any change in the existing state of any property to cover costs and expenses in reviewing and commenting on proposals for changes thereto by the DC. The amount of the fee, if any, shall be established by the Board and shall be set forth in the standards of the DC in effect from time to time. The initial fee established by the Association, with respect to any one proposed change in connection with the original construction of a residential structure shall be \$500, and the initial fee for modification of a residential structure or any other type of proposed change shall be \$100; provided however, the Board shall have the power and authority to increase these fees from time to time, as deemed necessary by the Board, in its sole discretion and without requiring an amendment to the Declaration.

Section 5.09. Initial Standards. In addition to any standards set from by the DC from time to time, all residences constructed on a Lot must have a minimum above ground square footage of 1250 feet.

## ARTICLE 6

### General Covenants and Restrictions

Section 6.01. Structures. No previously approved structure shall be used for any purpose other than that for which it was originally designed.

Section 6.02. Division of Lots. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer, or otherwise. Lots may only be split if they are split for the purpose of enlarging a Lot. Example-Three Lots can be turned into two.

Section 6.03. Antennas. No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot. Satellite dishes 18 inches in diameter or less are approved and must be incorporated in the landscaping plan to limit the visibility of the dish from the surrounding neighbors, and must have approval of location from the DC. No satellite dishes exceeding 32 inches in diameter shall be placed or maintained on any Lot.

Section 6.04. Vehicles and Parking. No boat, boat trailer, house trailer, camper, camper trailer, recreational vehicle, semi-truck, semi-tractor, semi-trailer, motor vehicle over one (1) ton capacity and used primarily for commercial purposes, motorcycle, or similar item, each as determined by the Board, shall be stored or permanently, continually, or regularly parked in and on any street, the Common Area, or in the open on any Lot or driveway. No vehicle with uncovered exterior logos, signs, letters, numbers, or advertising shall be stored or permanently, continually, or regularly parked in and on any street, the Common Area, or in the open on any Lot or driveway; provided however, this sentence does not apply to emergency service provider vehicles or police cars. All automobiles shall be regularly parked in the driveway or garage and not on any Lot, Common Area, or the street. No junk or derelict vehicle, as determined by the Board, or other vehicle on which current registration plates are not displayed shall be kept on any Lot or driveway. Vehicle repairs other than ordinary light maintenance are not permitted on any Lot or driveway.

Section 6.05. Fences. No chain link, or similar style, fence shall be constructed or maintained on any Lot.

Section 6.06. Exempt Property. All properties dedicated to and accepted by a local public authority and all properties owned by a charitable or nonprofit organization exempt from

taxation by the laws of the State of Kansas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 6.07. Offstreet Parking Requirement. Each of the Lots shall provide four (4) offstreet parking spaces per dwelling unit, including garages and driveway.

Section 6.08. Trees. No tree having a diameter of two (2) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the Association. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife in the Addition. The Association may designate certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section, the Association and its agents may come upon any Lot during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the Association nor its agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Section 6.09. Animals. No birds, chickens, reptiles, animals, or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use or breeding of animals be conducted in the Addition without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be kept on a leash when outside the residence site and on the Common Area. All dog runs must be in the rear yard on the back of the home. No dogs shall be continually or regularly chained or staked in any front or side yard. Dog runs shall be screened so as not to be visible from another Lot. Owners shall control emitted noises (e.g., barking, howling, etc.) at all times to provide quiet enjoyment for all Owners.

Section 6.10. Signs. Declarants may erect such signs and banners as deemed appropriate by the Declarants without any approval, but otherwise, no sign or other advertising device of any nature shall be placed upon any Lot or Common Area. Notwithstanding the foregoing, Owners may place, upon their own Lot, real estate "For Sale" signs approved by the DC as to aesthetics and, during a period commencing 45 days before an election and ending two days after the election, political signs, under six square feet, regarding candidates for public or association office or ballot questions. The Association may remove nonconforming signs upon three (3) days notice to the Owner, such removal to be at the cost of said Owner.

Section 6.11. Flags. No flag may be displayed upon a Lot, other than the following: official United States flags; official State of Kansas flags; official flags representing the United States Army, Navy, Air Force, Marine Corps or Coast Guard; POW-MIA flags; school and sports team flags; and holiday flags for holidays officially recognized by the state of Kansas or the federal government. All permitted flags must be displayed in a respectful manner.

Section 6.12. Temporary Buildings. No temporary building, trailer, garage, basement, tent, outbuilding, or building in the course of construction shall be used temporarily or permanently as a residence on any Lot.

Section 6.13. No Storage; Trash. No lumber, metals, bulk materials, refuse, or trash shall be kept, stored, or allowed to accumulate on any Lot or on the Common Area, except building materials may be stored on a Lot during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, at such place on the Lot so as to provide access to persons making such pickup. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. Furthermore, the Association may require all Owners to utilize one single trash service contractor in order to arrange service on specific days with a minimum number of trucks, thereby preserving the streets, and to establish conformity. The Association, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage of the same.

Section 6.14. Pipes. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

Section 6.15. Association May Trim or Prune. The Association shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given fifteen (15) days' prior written notice of such action.

Section 6.16. Motor Vehicles; Garages. No motor vehicles of any type other than maintenance vehicles shall be operated on the Common Area or the sidewalks and bicycle paths, if any, located in the Common Area. Garage doors which face on a street shall be kept closed at all times except for purposes of entry, exit, or maintenance.

Section 6.17. Sight Lines. No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twentyfive (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

Section 6.18. Noxious, Dangerous, and Offensive Activities Prohibited. No uses or activities shall be carried on or permitted that are dangerous or which may be or may become an annoyance or nuisance to the neighborhood due to odor, dust, smoke, noise, vibration or other similar causes.

Section 6.19. Maintenance of Drainage Channels and Swales. Each Owner shall maintain, mow, and keep in good repair and condition any drainage channels and swales located on any Lot owned by such Owner, in accordance with the master drainage plan.

Section 6.20. Home Professions and Industries. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Association. The Association, in its discretion, upon consideration of the circumstances in each case and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Association, to be compatible with a high quality residential neighborhood.

Section 6.21. Model Homes and Real Estate Offices. All else herein notwithstanding, any Lot owned by a Declarant or persons so authorized by a Declarant may be used for a model home or for a real estate office until the period of Declarant control set forth in Section 1.05 expires.

Section 6.22. Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot, except with specific written approval of the Association. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

Section 6.23. Land Use. None of the Lots may be improved, used, or occupied for other than the uses as designated by the recorded plat thereof, applicable zoning regulations, and this

Declaration, the most restrictive thereof to control in the event of any conflict.

Section 6.24. Requirement to Plant Lawn. Within sixty (60) days after occupancy of a residence on a Lot, the Owner thereof shall submit to the DC a landscape plan for its approval, pursuant to the provisions of Article 5 hereof, which plan shall include planting a lawn on such Lot and shall further include all areas between public sidewalk and the paved streets. Such landscaping shall be installed forthwith. In the event such landscaping is not so installed, the Association may, after giving written notice to any Owner of such Owner's failure to comply herewith, at any time after fifteen (15) days have expired from the date of such notice, perform said landscaping and collect from such owner the cost thereof. The Association is hereby granted the right to enter upon any such Lot for the purpose of performing said landscaping.

Section 6.25. SetBack Requirements. No building, structure or other improvement may be constructed or maintained on any Lot which shall be nearer than twentyfive (25) feet to the front property line (provided, however, that each Owner may submit to the DC a request, pursuant to the provisions of Article 5 hereof, for a variance from this twenty-five (25)-foot setback), nearer than six (6) feet to either side boundary line, or nearer than ten (10) feet to the rear boundary line of any Lot; provided, that the foregoing setback requirements shall not be applicable to any improvement, building, or structure constructed below the surface level of the ground, or to swimming pools constructed in the ground, or to any tennis courts, paddle tennis courts, or similar sports surfaces constructed at ground level, but nothing contained in this Section shall be deemed to permit the installation or operation of any lighting equipment in such areas.

Section 6.26. Garden Restrictions. Vegetable and other gardens shall be screened so as not to be visible from any other Lot or the Common Area. No garden(s) on any Lot may exceed 200 square feet in area without the prior approval of the DC.

Section 6.27. Occupancy of Residential Structures. No residential structures on any Lot shall be used or occupied by more than a single family, its domestic help, and occasional guests.

Section 6.28. Basketball Backboards. All basketball goals shall be glass. No "homemade" basketball backboards or supports, or mobile basketball goals shall be permitted. All basketball goals and supports shall be first approved by the DC.

Section 6.29. Entrance Treatments; Walls. Declarants hereby reserve the right and easement, in their sole discretion and at their own expense, to construct or install (whether before or after transfer of title to Owners) entrance treatments, fences and/or walls, of Declarants' own choice, type and design, on the perimeter of side yards and/or backyards (beyond the building

setback lines) on Lots selected by Declarants. The Association is hereby granted a perpetual, nonexclusive easement to enter upon any Lot on which there is situated an entrance treatment, fence or wall installed or erected by Declarants and to maintain, improve, repair and/or replace the same.

Section 6.30. Outdoor Recreational Improvements. No permanent outdoor recreational improvements, facilities or equipment shall be permitted, except with the specific written consent of the DC. No metal swing sets that tend to rust may be placed on any Lot. In general, the wood-type swing sets are approved.

Section 6.31. Christmas or Similar Holiday Lights. No Christmas or similar holiday lights and exterior decorations shall be placed or lit before Thanksgiving and shall be taken down no later than March 15 of the following year. No Halloween or similar holiday lights and exterior decorations shall be placed or lit before October 1 and shall be taken down no later than Thanksgiving.

Section 6.32. Mailboxes. The Declarants shall install cluster mailboxes, multiple mailboxes on a shared post, or other styles of mailboxes intended for use by multiple Lots and may charge the Owners a fee for such installation (the amount of the fee shall be established by the Declarants). After installation, the mailboxes will be owned and maintained by the Association. The Owners shall not be permitted to install or use other mailboxes.

Section 6.33. Air-Conditioning Units. No window air conditioning units may be installed in any home.

Section 6.34. Yard Improvements. All exterior sculpture, exterior fountains, and yard ornaments must be approved by the DC.

Section 6.35. Gasoline. No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that up to two (2) gallons of fuel may be stored in each home for emergency purposes.

Section 6.36. Leases. Any lease or rental agreement affecting any Lot must be in writing, and shall be subject to the requirements of this Declaration, and the Articles and Bylaws. No Lot shall be leased for hotel or transient purposes or for a term less than six (6) months and no portion of a Lot which is less than the entire Lot shall be leased.

Section 6.37. Restrictions not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the Arbor Valley Community

Unit Plan, applicable zoning laws, or the laws, rules, or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall be taken to govern and control.

## ARTICLE 7

### Enforcement

Section 7.01. Enforcement. Subject to the provisions of Article 12, the Association, a Declarant, or any Owner shall have the right to enforce, by and proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, a Declarant, 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 right to include in its claim for relief a reasonable sum to reimburse it for its attorneys' fees and any other expenses reasonably incurred in enforcing the Association's rights hereunder.

Section 7.02. Fines for Violations. Pursuant to the right to enforce the General Covenants and Restrictions set forth in Article 6, the Association has adopted the following procedures for imposing fines for violations of the General Covenants and Restrictions.

- a. The President of the Association is designated to receive all complaints alleging violations of the General Covenants and Restrictions. All such complaints must be in writing and signed by the person making the complaint. Any Member, including members of the Board may make a complaint.
- b. Upon receiving a written complaint the President shall cause the complaint to be investigated by a committee of any two Members designated by the President and the committee may included members of the Board. The investigation must be completed within five (5) days of receipt of the complaint and shall require no more than one attempt to personally contact the offending party in an effort to resolve the complaint.
- c. If the complaint cannot be resolved by personal contact the President shall call a meeting of the Board. At this meeting the investigation of the committee shall be presented to the Board and if a majority of the Board present agrees that a violation has occurred or continues to exist then a Notice of Violation shall be immediately delivered to the offending party. The Notice of Violation shall state the details of the violation(s) and give the offending party a period of ten days to correct the violation(s) or the

Member at whose property the violation exists will be subject to fines without further notice from the Board.

d. If the Board serves notice of a violation upon an offending party as set forth in Section 7.02(c) then the following procedure shall apply:

1. If the violation is cured within five (5) days of the delivery of the Notice of Violation then no further action will be taken by the Board unless the violation occurs again.

2. If the violation occurs again within thirty (30) days of the offending party's agreement to cure the violation then the fine(s) as set forth in Section 7.02(d) shall be imposed with out further notice to the offending party.

3. If the violation(s) is not cured within five (5) days of delivery of the Notice of Violation then the President shall cause to be mailed to the offending party a Notice of Fine by Certified Mail to be paid to the Association Treasurer within fifteen (15) days. The amount of the fine shall be determined by the Board but shall not exceed Seventy-five Dollars (\$75.00) per each week that the violation exists until the violation is corrected and the fine is paid in full. The fine(s) shall appear on the offending party's quarterly dues statements as an assessment and such fine(s) shall constitute a lien against any Lot or Lots the offending party may own in the Addition until paid in full.

e. The Board or any Member on behalf of the Association is authorized to take legal action to collect the accrued fines or to force the correction of the violation and the costs of such proceedings shall be paid by the offending party including its attorneys' fees and any other expenses reasonably incurred in enforcing the Association's rights hereunder. The Association shall have no liability to any Member for legal expenses or fees incurred in pursuing any action on behalf of the Association.

f. In the event that the Board determines that the actions of the offending party are causing or may cause permanent harm to the Association or any Member of the Association then the Board may depart from this procedure and seek to enforce the General Covenants and Restriction in a court of law and may seek all relief necessary to protect the interests of the Association or its Members.

g. Nothing herein shall act to prevent any Member from enforcing the Covenants or Restrictions pursuant to Article 7 of this Declaration.

## ARTICLE 8

### Additional Land

Declarants may, from time to time, annex additional real property, including additional Common Area, to the property covered by this Declaration, and thereby subject the same to all of the terms, provisions, and conditions of this Declaration, by the execution and filing for recordation with the Register of Deeds of Sedgwick County, Kansas, of an instrument, signed by all Declarants, expressly stating an intention so to annex and describing such additional real property to be so annexed. During that fifteen (15) year period commencing with the date of the recording of this Declaration, a Declarant, their successors or assigns, may, with the written consent of all other Declarants, annex such additional real property in their absolute discretion. From and after the termination of said fifteen (15) year period, such additional real property may be annexed by the Declarants or the Association, provided that each such annexation is approved in writing by twothirds (2/3) of the votes of the Members entitled to vote.

## ARTICLE 9

### Power of Assignment and Delegation

Notwithstanding anything herein to the contrary, each Declarant hereby reserves the right to transfer, assign, mortgage or pledge any and all of its privileges, rights, title and interest hereunder, or in the Addition, by means of recording an assignment of such with the Office of the Register of Deeds of Sedgwick County. Upon recording of such assignment, such Declarant shall be relieved of any liability arising from the performance or non-performance of such rights and obligations accruing from and after the recording or such assignment. No such successor assignee of the rights of such Declarant shall have or incur any liability for the obligations or acts of any predecessor in interest.

## ARTICLE 10

### Severability

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

## ARTICLE 11

### Amendment

Section 11.01. Covenants Running With the Land; Amendment by Members. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, except that at any time, and from time to time, they may be amended or terminated by the vote of not less than two thirds (2/3) of the votes of the Members. Any amendment or termination pursuant to this Section 11.01 shall be effected by recording in the Office of the Register of Deeds of Sedgwick County, a document executed by the required number of Members, or certified by the Board as having been duly adopted, setting out such amendment(s) or stating that this Declaration shall be terminated or amended as provided therein.

Section 11.02. Amendment by Declarants. So long as Declarants have the power to control the Association pursuant to Section 1.05, Declarants reserve the right to amend this Declaration without approval of the Association, the Board, the Members, or any Owner. An Amendment pursuant to this Section shall be effective when executed by all Declarants and filed of record in the office of the Register of Deeds of Sedgwick County, Kansas

Section 11.03. Approval Required.

- a. Notwithstanding anything else in this Article 11 to the contrary, Section 6.07 shall not be amended without the prior approval of the Valley Center City Council.
- b. No amendment materially impairing the rights of any first priority mortgagee made in good faith and for value shall be binding on the holder of the mortgage unless consented to in writing by the holder of the mortgage.
- c. So long as a Declarant owns one Lot, no amendment materially impairing the rights of such Declarant shall be binding on such Declarant unless consented to in writing by such Declarant.

## ARTICLE 12

### Dispute Resolutions and Limitations on Litigation

Section 12.01. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarants, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”) agree to encourage the amicable resolution of disputes involving the properties within the Addition in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Addition including, without limitation, claims, grievances, or disputes arising out of or relating to the interpretation, application, or enforcement of this Declaration, the Bylaws, the Rules, or the Articles (collectively, “Claim”), except for those Claims authorized in Section 12.02, shall be resolved using the procedures set forth in Section 12.03 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section 12.02. Exempt Claims. The following Claims (“Exempt Claims”) shall be exempt from the provisions of Section 12.01:

- a. Any suit by the Association against any Bound Party to enforce the provisions of Article 3 (Assessments), Article 4 (Covenants for Maintenance), Article 5 (Architectural Control), and Section 7.02 (Fines for Violations);
- b. Any suit by the Association against any Bound Party to enforce the provisions of Article 6 (General Covenants and Restrictions);
- c. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of this Declaration;
- d. Any suit arising out of any written contract between Owners, or between a Declarant and any builder, which would constitute a cause of action under the laws of the State of Kansas in the absence of this Declaration, and the Bylaws and Articles; and
- e. Any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 12.03, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to the alternative dispute resolution procedures of Section 12.03 shall require the approval of the Association, pursuant to the procedures set forth in the Bylaws.

Section 12.03. Mandatory Procedures for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures:

a. Notice. Any Bound Party having a claim (“Claimant”) against any other Bound Party (“Respondent”), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the “Notice”), stating plainly and concisely:

1. The nature of the Claim, including date, time, location, persons involved and Respondent's role in Claim;

2. The basis of the Claim (“Claimant”) (i.e., the provisions of this Declaration, the Bylaws, the Articles or the Rules, or other authority out of which the claim arises);

3. What Claimant wants Respondent to do or not to do to resolve the Claim; and

4. The Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

b. Negotiation.

1. Each party to a dispute shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by negotiation.

2. Upon receipt of a written request from any Claimant or Respondent, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the community.

c. Final and Binding Arbitration.

1. If the parties are unable to resolve the Claim within thirty (30) days of delivery of the Notice to each Respondent, the Claimant shall have fifteen (15) additional days to submit the Claim to arbitration.

2. This subsection c.2 is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Kansas. The arbitration award (the “Award”) shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Kansas.

Section 12.04. Allocation of Costs of Resolving Claims. Each party shall bear its own costs incurred prior to and during the proceedings described in Section 12.03.

Section 12.05. Enforcement of Resolution. If the parties agree to a resolution of any Claim through negotiation in accordance with Section 12.03 and any party thereafter fails to abide by the terms of such agreement, or if any party fails to comply with the terms of any Award following arbitration, then any other party may file suit to enforce such agreement or Award. In such event, the party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys’ fees and court costs.

Section 12.06. Commencement of Litigation. Any litigation by the Association other than the “Exempt Claims” set out in Section 12.02, shall require an affirmative vote of fifty percent (50%) of the members of the Association prior to the institution of such litigation.

## ARTICLE 13

### General Provisions

Section 13.01. Notices. Any notice or other communication required to be sent to any Owner under the provisions of this Declaration must be in writing and mailed, postage prepaid, by registered or certified mail, return receipt requested, and must be directed as follows:

- a. If intended for an Owner, to the address to which tax statements and assessments are mailed, according to the tax assessor’s public records, or the last address for the Owner made known, in writing, to the Association.
- b. If intended for the Association, to \_\_\_\_\_, or the last address for the Association made known, in writing, to the Owners.

c. If intended for a Declarant, to \_\_\_\_\_, or the last address for such Declarant made known, in writing, to the Owners.

Section 13.02. Singular or Plural. Words used herein, regardless of the number and gender specifically used, will be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

Section 13.03. Interpretation. The terms “hereof,” “herein,” and “hereunder,” as well as words of similar import, shall be construed to refer to this Declaration as a whole, and not to any particular article, section, subsection, paragraph, subparagraph, clause, or provision, unless expressly stated. The captions in this Declaration are for convenience only and do not in any way define, limit, describe, or amplify the terms and provisions of this Declaration or the scope or intent thereof.

Section 13.04. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions in this Declaration, nor the enforcement of any lien provisions, shall defeat or render invalid the lien of any first priority mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu of foreclosure.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, Declarants have executed this Declaration as of this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jose A. Marquez

-and-

\_\_\_\_\_  
Laura Y. Marquez a/k/a Laura Y. Ortega Avitia

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Jose a. Marquez and Laura Y. Marquez a/k/a Laura Y. Ortega Avitia, husband and wife.

My Appointment Expires:

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

SOLID BUILDERS, LLC  
a Kansas limited liability company

By: \_\_\_\_\_  
[Name], [Position]

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Solid Builders, LLC, a Kansas limited liability company.

My Appointment Expires:

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



GRUPO CAFRIMA LLC  
a Texas limited liability company

By: \_\_\_\_\_  
[Name], [Position]

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Grupo Cafrima LLC, a Texas limited liability company.

My Appointment Expires:

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

EXHIBIT A  
PROPERTY

The following real property located in “Arbor Valley”, Valley Center, Sedgwick County, Kansas:

- Lots 1 thru 33, Block A;
- Lots 1 thru 29, Block B;
- Reserves A and B.

EXHIBIT B  
COMMON AREA

The following real property located in “Arbor Valley”, Valley Center, Sedgwick County, Kansas:

- Reserves A and B.

ARBOR VALLEY

Notice of Building Restrictions and  
Right to Repurchase

THE UNDERSIGNED, developers of that certain real property commonly described as “Arbor Valley” and located in Valley Center, Sedgwick County, Kansas, do hereby declare that those certain building lots set out and described on Exhibit “A” attached hereto and made a part hereof, are subject to, among other covenants, conditions and restrictions, the following:

1. All lot purchase contracts for said lots must contain, among other provisions, certain provisions regarding the owner’s duty to build; the developer’s right to repurchase; and requirement of the owner to utilize an approved builder, in substantially the following form:

Duty to Build/Right to Repurchase. Buyer understands and agrees that Buyer must, within nine (9) months of the date of closing, start construction of a residence on the lot. Failure to start construction within such nine (9) month period shall entitle Seller to exercise the following option:

Buyer hereby grants to Seller an option to repurchase the lot at any time during the five (5) year period following the expiration of nine (9) months of the date of closing, for a repurchase price equal to one hundred percent (100%) of the purchase price shown herein; provided, that this option shall lapse and terminate if Buyer commences and diligently continues construction of a residence on the lot prior to the exercise of this option by Seller. It is agreed that the provisions of this paragraph, and the obligations of Buyer contained herein shall survive the closing and delivery of the deed provided for in this Contract and shall be binding upon Buyer’s successors and assigns. Seller shall have the right to include this right to repurchase in the deed of conveyance.

Buyer acknowledges that all builders constructing residences in Arbor Valley Development must pay a Marketing Fee for homes they build in the Arbor Valley development.

2. Regardless of the time a residence is constructed on any lot, the builder must have executed a written builder’s agreement with the undersigned wherein such approval is granted which agreement shall contain, among other things, a provision providing for the Builder to pay a Marketing Fee to the undersigned for any home built in the Arbor Valley development.

3. The foregoing shall apply to all of the lots described on Exhibit "A" whether initially acquired from the undersigned or an individual owner of such lot and no director, officer, employee or agent of the undersigned has any authority to waive or modify the foregoing requirements.

4. The foregoing shall be deemed covenants running with the land and shall be binding on the initial purchasers of any lot, their heirs, personal representatives, successors and assigns.

This Notice executed as of this \_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Jose A. Marquez

-and-

\_\_\_\_\_  
Laura Y. Marquez a/k/a Laura Y. Ortega Avitia

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2023, by Jose a. Marquez and Laura Y. Marquez a/k/a Laura Y. Ortega Avitia, husband and wife.

My Appointment Expires:

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

SOLID BUILDERS, LLC  
a Kansas limited liability company

By: \_\_\_\_\_  
[Name], [Position]

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Solid Builders, LLC, a Kansas limited liability company.

My Appointment Expires:

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



GRUPO CAFRIMA LLC  
a Texas limited liability company

By: \_\_\_\_\_  
[Name], [Position]

ACKNOWLEDGMENT

STATE OF KANSAS            )  
  ) SS:  
COUNTY OF SEDGWICK    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, as \_\_\_\_\_ of Grupo Cafrima LLC, a Texas limited liability company.

My Appointment Expires:

---

Notary Public

## **EXHIBIT “A”**

The following real property located in “Arbor Valley”, Valley Center, Sedgwick County, Kansas:

- Lots 1 thru 33, Block A;
- Lots 1 thru 29, Block B.