

**DECLARATION OF  
COVENANTS, CONDITIONS  
& RESTRICTIONS  
OF  
HAWTHORNE PLACE**

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**A Planned Residential Community  
with a Mandatory Owners Association  
in Oklahoma City, Oklahoma  
Oklahoma County**

**Developed  
by  
QUICK-MINCEY PROPERTIES, II, L.L.C**

AFTER RECORDING PLEASE RETURN TO:  
4117 N. W. 122<sup>nd</sup> St. Suite B  
Oklahoma City, Oklahoma 73120

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COVENANTS, CONDITIONS & RESTRICTIONS  
OF  
HAWTHORNE PLACE

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# DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS OF HAWTHORNE PLACE

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This Declaration of Covenants, Conditions & Restrictions of Hawthorne Place is made by Quick-Mincey Properties, II, L.L.C, an Oklahoma limited liability company ("**Declarant**"), on the date signed below. Declarant owns the real property described in Exhibit A of this Declaration, together with the improvements thereon.

Declarant desires to establish a general plan of development for the planned community to be known as Hawthorne Place. Declarant also desires to provide a reasonable and flexible procedure to maintain certain development rights that are essential for the successful completion and marketing of the Property.

Declarant further desires to provide for the preservation, administration, and maintenance of portions of Hawthorne Place, and to protect the value, desirability, and attractiveness of Hawthorne Place. As an integral part of the development plan, Declarant deems it advisable to create a property owners association to perform these functions and activities more fully described in this Declaration and the other Community Documents described below.

Declarant DECLARES that the property described in Exhibit A, and any additional property made subject to this Declaration by recording one or more amendments of or supplements to this Declaration, will be owned, held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, and easements of this Declaration, including Declarant's representations and reservations in the Declarant Rights Article below, which run with the real property and bind all parties having or acquiring any right, title, or interest in any part of the property, their heirs, successors, and assigns, and inure to the benefit of each Owner of any part of the property.

## **ARTICLE 1)** **DEFINITIONS**

The following words and phrases, whether or not capitalized, have specified meanings when used in the Community Documents, unless a different meaning is apparent from the context in which the word or phrase is used.

a) "**Architectural Reviewer**" means the entity having jurisdiction over a particular application for architectural approval. During the Development Period, the Architectural Reviewer is Declarant, Declarant's designee, or Declarant's delegatee. Thereafter, the board-appointed Architectural Control Committee is the Architectural Reviewer.

b) "**Assessment**" means any charge levied against a lot or owner by the Association, pursuant to the Community Documents or State law, including but not limited to Regular Assessments, Special Assessments, and Individual Assessments, as defined in Article 8 of this Declaration.

c) "**Association**" means the association of owners of all lots in the Property. The initial name of the Association is Hawthorne Place Association.

d) "**Board**" means the board of directors of the Association.

e) "**Builder**" is defined in the Declarant Rights Article of this Declaration.

f) "**Common Area**" means portions of real property and improvements thereon that are owned and/or maintained by the Association, as described in Article 4 below.

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as any of these may be amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Community Document is a part of that Community Document.

h) **"Declarant"** means Quick-Mincey Properties, II, an Oklahoma limited liability company, which is developing the Property, or the successors and assigns of Quick-Mincey Properties, II, which are designated a Successor Declarant by Quick-Mincey Properties, II, L.L.C., or by any such successor and assign, in a recorded document, executed by both Declarant and Successor Declarant in the case of a voluntary assignment.

i) **"Declarant Control Period"** is defined in the Declarant Rights Article of this Declaration.

j) **"Declaration"** means this document, as it may be amended from time to time.

k) **"Development Period"** is defined in the Declarant Rights Article of this Declaration.

l) **"Lot"** means a portion of the Property intended for independent ownership, on which there is or will be constructed a dwelling, as shown on the Plat. As a defined term, "lot" does not refer to common areas, even if platted and numbered as a lot. Where the context indicates or requires, "lot" includes all improvements thereon and any portion of a right-of-way that customarily is used exclusively by and in connection with the lot.

m) **"Owner"** means a holder of recorded fee simple title to a lot. Every owner is a member of the Association. A reference in any Community Document or applicable law to a percentage or share of owners or members means owners of at least that percentage or share of the lots, unless a different meaning is specified. For example, "a majority of owners" means owners of at least a majority of the lots.

n) **"Plat"** means all plats, singly and collectively, recorded in the Real Property Records of Oklahoma County, Oklahoma, and pertaining to the real property described in Exhibit A of this Declaration, including all dedications, limitations, restrictions, easements, notes, and reservations shown on the plat, as it may be amended from time to time.

o) **"Property"** means all the land subject to this Declaration and all improvements, easements, rights, and appurtenances to the land. The name of the Property is Hawthorne Place. The Property is located on land described in Exhibit A to this Declaration, as it may be amended or supplemented from time to time, and includes every lot and any common area thereon.

## **ARTICLE 2) PROPERTY SUBJECT TO DOCUMENTS**

a) **PROPERTY.** The real property described in Exhibit A is held, transferred, sold, conveyed, leased, occupied, used, insured, and encumbered subject to the terms, covenants, conditions, restrictions, liens, and easements of this Declaration, including Declarant's representations and reservations in the Declarant Rights Article below, which run with the Property and bind all parties having or acquiring any right, title, or interest in the Property, their heirs, successors, and assigns, and inure to the benefit of each owner of the Property.

b) **ADDITIONAL PROPERTY.** Additional real property may be annexed to the Property and subjected to the Declaration and the jurisdiction of the Association on approval of owners representing at least two-thirds of the lots in the Property, or, during the Development Period, by Declarant as permitted in the Declarant Rights Article. Annexation of additional property is accomplished by recording a declaration of annexation, including an amendment of Exhibit A, in the Real Property Records of Oklahoma County, Oklahoma.

c) **LAND USE.** Although this Declaration contains a limited number of disclosures about the Property and its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property and its location, and make inquiries of anything that concerns him. Except for the express disclosures stated in this Declaration, Declarant makes no representation of any kind as to current or future uses - actual or permitted - of any land that is adjacent to or near the Property, regardless of what the plat shows as potential uses of adjoining land. Declarant, Builders, and the Association can not and do not guaranty scenic views, volumes of

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traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water, or air.

d) **RESTRICTIONS, EASEMENTS & PLAT DEDICATIONS.** In addition to the easements and restrictions contained in this Declaration, the Property is subject to all restrictions, easements, licenses, leases, and encumbrances of record, including any shown or referenced on the plat, each of which is incorporated herein by reference. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by prior-recorded restrictions, easements, licenses, leases, and encumbrances, and further agrees to maintain any easement that crosses his lot and for which the Association does not have express responsibility.

e) **APPLICABLE LAW.** In addition to publicly recorded instruments, the Property is subject to statutes and public laws and ordinances in effect at the time a provision of the Community Documents is applied, and pertaining to the subject matter of the Community Document provision. Statutes and ordinances specifically referenced in the Community Documents are "Applicable Law" on the date of the Community Document, and are not intended to apply to the Property if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

### **ARTICLE 3) PROPERTY EASEMENTS AND RIGHTS**

a) **DECLARANT RIGHTS.** A number of provisions in the Declaration are modified by Declarant's rights and reservations under the Declaration during the Development Period. These rights and reservations are found in the Declarant Rights Article of this Declaration, which controls over anything to the contrary in this Declaration.

b) **GAS PIPELINE DISCLOSURE.** As shown on the plat, a gas pipeline and easement runs through the Property from east to west. By acquiring an ownership or occupancy interest in the Property, each owner and resident acknowledges that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees have no control over pre-existing and superior land uses within the Property, such as the pipeline easements and applications. Prospective owners and residents are encouraged to inform themselves about the location of the pipeline and aspects of being in close proximity to a gas pipeline.

c) **EASEMENT FOR ENTRY & SCREENING FEATURES.** The Association is hereby granted a perpetual easement (the "**Entry Easement**") over each lot that abuts or contains a portion of the Property's entry feature or screening feature (such as a wall, fence, or berm) for the purposes stated in this Section, regardless of whether or how the plat shows the easement, entry feature, or screening feature. The purpose of the Entry Easement is to provide for the existence, repair, improvement, and replacement of the Property's entry feature and screening feature, if any, to be maintained by the Association as a common area. In exercising this Entry Easement, the Association may construct, maintain, improve, and replace improvements reasonably related to the entrance and screening of a residential subdivision, such as: screening walls, fences and/or berms; planter beds, landscaping, and plant material; electrical and water meters and equipment, including light fixtures and sprinkler systems; and signage relating to the Property. The owners of the lots burdened with the Entry Easement will have the continual use and enjoyment of their lots for any purpose that does not interfere with and prevent the Association's use of the Entry Easement. In addition to the easement granted herein, the Association has the temporary right, from time to time, to use as much as the surface of a burdened lot as may be reasonably necessary for the Association to perform its contemplated work on the Entry Easement. This easement is perpetual. The Entry Easement will terminate when the purpose of the easement ceases to exist, is abandoned by the Association, or becomes

impossible to perform. The Association may assign this easement, or any portion thereof, to the city if the city agrees to accept the assignment. This Entry Easement applies only to the original entry and screening features, if any, installed by Declarant and replacements thereof, and does not apply or pertain to fences installed on individual lots, even though the lot abuts a major thoroughfare.

e) IF STREETS ARE PUBLIC. This Section applies during any period in which the streets within Hawthorne Place are publicly dedicated. Because streets within the Property may be converted from publicly dedicated to privately owned, and vice versa, this Article addresses both conditions. Public streets are part of the common area only to the extent a governmental body, such as the city or county, authorizes or delegates to the Association. The Association, acting through the board, is specifically authorized (a) to accept from a governmental body any delegation of street-related duties, and (b) to act as attorney in fact for the owners in executing instruments required by public ordinance or public law to impose, modify, or remove restrictions or traffic devices (such as speed bumps) on public streets in the Property. By acquiring an ownership interest in a lot or an occupancy interest in a house, a person acknowledges the authority of the Association to regulate aspects of the streets in the Property.

f) IF STREETS ARE PRIVATE. This Section applies during any period in which the streets within Hawthorne Place are private, and is not applicable to the Property if the streets are publicly dedicated. By acquiring an ownership interest in a lot or an occupancy interest in a house, a person acknowledges the authority of the Association to regulate aspects of the streets in the Property.

i) Common Area, Common Expense. If the streets within Hawthorne Place are private streets, they are to be owned, maintained, and governed by the Association as a common expense of the owners. The Association, acting through the board, is specifically authorized to adopt, amend, repeal, and enforce rules, regulations, and procedures for use of private streets, if any, in the Property - including but not limited to (a) speed limits, (2) location, use, and appearance of traffic control devices, such as signs and speed humps, (3) designation of parking or no-parking areas, (4) limitations or prohibitions on curbside parking, (5) removal or prohibition of vehicles that violate applicable rules and regulations, (6) fines for violations of applicable rules and regulations, and (7) programs for controlling access through entrance gates (if any) and emergency access gates (if any).

ii) Street Assessments. The costs of maintaining, repairing, replacing, and reserving for the private streets, street improvements, and (if any) entry gates are common expenses that are properly funded with regular and special assessments, and included in the Association's annual budget. Nevertheless, the board may segregate the street-related expenses and levy a street assessment separately from the regular assessment. If the Association levies a street assessment, it must be disclosed in resale materials prepared by the Association.

iii) Private Street Reserves. The Association will endeavor to maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of the private streets and street-related improvements, such as street lights. Street reserves may be funded out of street assessments. Street reserves are dedicated for the stated purpose and may not be used for other purposes.

iv) Maintenance Easement. The Association is hereby granted a perpetual easement (the "**Street Maintenance Easement**") over each lot that abuts or contains a portion of the Property's private streets for the purposes stated in this Section, regardless of whether or how the plat shows the street. The street-side of every lot in the Property is burdened with the Street Maintenance Easement, as needed for the operation, maintenance, and replacement of the private streets. The purpose of the Street Maintenance Easement is to provide for the existence, repair, improvement, and replacement of the Property's private streets and street signs, to be maintained by the Association as a common area. In exercising this Street Maintenance Easement, the Association may construct, maintain, improve, and replace improvements reasonably related to private streets of a residential subdivision. Also, the Association has the temporary right, from time to time, to use as much of the surface of a lot as may be reasonably necessary for the Association to perform its contemplated work on the Street Maintenance Easement.

g) OWNER'S EASEMENT OF ENJOYMENT. Every owner is granted a right and easement of enjoyment over the common areas and to use of improvements therein, subject to other rights and easements contained in the Community Documents.

h) OWNER'S INGRESS/EGRESS EASEMENT. Every owner is granted a perpetual easement over the Property's streets, as may be reasonably required, for vehicular ingress to and egress from his lot.

i) OWNER'S RIGHT TO BUILD. That a house lot remains vacant and unimproved for a period of years, even decades, does not diminish the right of the lot owner to construct improvements on the lot. Nor does a vacant lot enlarge the rights of owners of neighboring lots, who may have become so accustomed to the open space that they expect it to remain unimproved forever.

j) ASSOCIATION'S ACCESS EASEMENT. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, grants to the Association an easement of access and entry over, across, under, and through the Property, including without limitation all common areas and the owner's lot and all improvements thereon - including the house and yards - for the below-described purposes.

i) Purposes. Subject to the limitations stated below, the Association may exercise this easement of access and entry for the following express purposes:

- (1) To inspect the property for compliance with maintenance and architectural standards.
- (2) To perform maintenance that is permitted or required of the Association by the Community Documents or by applicable law.
- (3) To perform maintenance that is permitted or required of the owner by the Community Documents or by applicable law, if the owner fails or refuses to perform such maintenance.
- (4) To enforce architectural standards.
- (5) To enforce use restrictions.
- (6) The exercise of self-help remedies permitted by the Community Documents or by applicable law.
- (7) To enforce any other provision of the Community Documents.
- (8) To respond to emergencies.
- (9) To grant easements to utility providers as may be necessary to install, maintain, and inspect utilities serving any portion of the Property.
- (10) To perform any and all functions or duties of the Association as permitted or required by the Community Documents or by applicable law.

ii) No Trespass. In exercising this easement on an owner's lot, the Association is not liable to the owner for trespass.

iii) Limitations. If the exercise of this easement requires entry onto an owner's lot, including into an owner's fenced yard, the entry will be during reasonable hours and after notice to the owner. This Subsection does not apply to situations that - at time of entry - are deemed to be emergencies that may result in imminent damage to or loss of life or property.

k) UTILITY EASEMENT. The Association may grant permits, licenses, and easements over common areas for utilities, roads, and other purposes necessary for the proper operation of the Property. A company or entity, public or private, furnishing utility service to the Property, is granted an easement over the Property for ingress, egress, meter reading, installation, maintenance, repair, or replacement of utility lines and equipment, and to do anything else necessary to properly maintain and furnish utility service to the Property. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, master or cable television, and security.

l) NOTICE OF LIMITATION ON LIABILITY. The development of the Property occurs during a period when many local governments are trying to be absolved of liability for flood damage to private property. As a condition of plat approval, a governmental entity may require a plat note that not only disavows the entity's liability for flood damage, but affirmatively assigns the liability to the Association. Declarant does not intend or desire to impose such absolute liability on the nonprofit association of lot owners. Notwithstanding plat notes or public codes or ordinances now in existence or hereafter created, the Association cannot and should not be liable for acts of God or for property damage that is not the result of the Association's negligence or wilful misconduct. On behalf of the Association, Declarant hereby gives notice that the Association does not accept liabilities imposed by any governmental entity for which the Association cannot obtain insurance at a reasonable cost, or for which its members refuse to fund reserve accounts at levels sufficiently high to pay the damages for which the governmental entity may seek to make the Association liable. This notice is not intended to create a liability for any governmental entity. Further, this notice may not be construed to create a duty for the Association to obtain insurance or to fund reserve accounts for damage from rising waters.

m) SECURITY. The Association may, but is not obligated to, maintain or support certain activities within the Property designed, either directly or indirectly, to improve safety in or on the Property. Each owner and resident acknowledges and agrees, for himself and his guests, that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees are not providers, insurers, or guarantors of security within the Property. Each owner and resident acknowledges and accepts his sole responsibility to provide security for his own person and property, and assumes all risks for loss or damage to same. Each owner and resident further acknowledges that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees have made no representations or warranties, nor has the owner or resident relied on any representation or warranty, express or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire, burglar, and/or intrusion systems recommended or installed, or any security measures undertaken within the Property. Each owner and resident acknowledges and agrees that Declarant, Builders, the Association, and their respective directors, officers, committees, agents, and employees may not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

#### **ARTICLE 4)** **COMMON AREA**

a) OWNERSHIP. The designation of real property as a common area is determined by the plat and this Declaration, and not by the ownership of the property. This Declaration contemplates that the Association will eventually hold title to every common area capable of independent ownership by the Association. Declarant may install, construct, or authorize certain improvements on common areas in connection with the initial development of the Property, and the cost thereof is not a common expense of the Association. Thereafter, all costs attributable to common areas, including maintenance, property taxes, insurance, and enhancements, are automatically the responsibility of the Association, regardless of the nature of title to the common areas, unless this Declaration elsewhere provides for a different allocation for a specific common area.

b) ACCEPTANCE. By accepting an interest in or title to a lot, each owner is deemed (a) to accept the common area of the Property, and any improvement thereon, in its then-existing "as is" condition; (b) to acknowledge the authority of the Association, acting through its board of directors, for all decisions pertaining to the common area; (c) to acknowledge that transfer of a common area's title to the Association by or through the Declarant is a ministerial task that does not require acceptance by the Association; and (d) to acknowledge the

continuity of maintenance of the common area, regardless of changes in the Association's board of directors or management.

c) CONVEYANCE. The Association, acting through its board of directors, may accept or convey real property interests from or to, as the case may be, a governmental entity or agency, if the conveyance is required by the governmental entity or agency, or if the board deems such a conveyance to be in the best collective interest of the Association. Property interest capable of conveyance include fee title to all or part of a common area, an easement across real property, and a lease or license of real property.

d) COMPONENTS. The common area of the Property consists of the following components on or adjacent to the Property, even if located on a lot or a public right-of-way:

- (1) All of the Property, save and except the house Lots.
- (2) Any area shown on the plat as common area or an area to be maintained by the Association.
- (3) The private streets, if any, being all streets and cul-de-sacs within the Property that are not publicly dedicated.
- (4) The entry feature, screening feature, and sign monument - if any.
- (5) Any modification, replacement, or addition to any of the above-described areas and improvements.
- (6) Personal property owned by the Association, such as books and records, office equipment, and supplies.

e) LIMITED COMMON AREA. If it is in the best interest of the Association, a portion of the common area may be licensed, leased, or allocated to one or more lots for their sole and exclusive use, as a limited common area, whether or not the area is so designated on the plat. Inherent in the limiting of a common area, maintenance of the limited common area becomes the responsibility of the lot owner, rather than the Association. For example, a common area that is difficult to access and maintain except via the adjoining house lot might be a candidate for limited common area.

## **ARTICLE 5)** **ARCHITECTURAL COVENANTS AND CONTROL**

a) PURPOSE. Because the lots are part of a single, unified community, this Declaration creates rights to regulate the design, use, and appearance of the lots and common areas in order to preserve and enhance the Property's value and architectural harmony. One purpose of this Article is to promote and ensure the level of taste, design, quality, and harmony by which the Property is developed and maintained. Another purpose is to prevent improvements and modifications that may be widely considered to be radical, curious, odd, bizarre, or peculiar in comparison to then existing improvements. A third purpose is to regulate the appearance of every aspect of proposed or existing improvements on a lot, including but not limited to dwellings, fences, landscaping, retaining walls, yard art, sidewalks and driveways, and further including replacements or modifications of original construction or installation. During the Development Period, a primary purpose of this Article is to reserve and preserve Declarant's right of architectural control.

b) ARCHITECTURAL CONTROL DURING THE DEVELOPMENT PERIOD. During the Development Period, neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes on vacant lots. During the Development Period, the Architectural Reviewer for new homes on vacant lots is the Declarant or its delegates.

i) Declarant's Rights Reserved. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that Declarant has a substantial interest in ensuring that the improvements within the Property enhance Declarant's reputation

*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

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ii) Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to (a) a modifications or architectural committee appointed by Declarant or by the board, (b) a modifications or architectural committee elected by the owners, or (c) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason.

c) ARCHITECTURAL CONTROL BY ASSOCIATION. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Architectural Control Committee (the "**ACC**"), or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through the ACC will assume jurisdiction over architectural control. The ACC will consist of at least 3 but not more than 7 persons appointed by the board, pursuant to the Bylaws. Members of the ACC serve at the pleasure of the board and may be removed and replaced at the board's discretion. At the board's option, the board may act as the ACC, in which case all references in the Community Documents to the ACC are construed to mean the board. Members of the ACC need not be owners or residents, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the board.

d) LIMITS ON LIABILITY. The Architectural Reviewer has sole discretion with respect to taste, design, and all standards specified by this Article. The Architectural Reviewer and each of its members has no liability for decisions made in good faith by the Architectural Reviewer, and which are not arbitrary or capricious. The Architectural Reviewer is not responsible for: (a) errors in or omissions from the plans and specifications submitted to the Architectural Reviewer, (b) supervising construction for the owner's compliance with approved plans and specifications, or (c) the compliance of the owner's plans and specifications with governmental codes and ordinances, state and federal laws.

e) PROHIBITION OF CONSTRUCTION, ALTERATION & IMPROVEMENT. Without the Architectural Reviewer's prior written approval, a person may not construct a dwelling or make an addition, alteration, improvement, installation, modification, redecoration, or reconstruction of or to the Property, if it will be visible from a street, another lot, or the common area. The Architectural Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Property.

f) ARCHITECTURAL APPROVAL. To request architectural approval, an owner must make written application to the Architectural Reviewer and submit 2 identical sets of plans and specifications showing the nature, kind, shape, color, size, materials, and locations of the work to be performed. In support of the application, the owner may but is not required to submit letters of support or non-opposition from owners of lots that may be affected by the proposed change. The application must clearly identify any requirement of this Declaration for which a variance is sought. The Architectural Reviewer will return one set of plans and specifications to the applicant marked with the Architectural Reviewer's response, such as "Approved," "Denied," or "More Information Required." Verbal approval by an Architectural Reviewer, the Declarant, an Association director or officer, a member of the ACC, or the Association's manager does not constitute architectural approval by the appropriate Architectural Reviewer, which must be in writing.

i) Deemed Approval. The applicant may presume that his request has been approved by the Architectural Reviewer (1) if the applicant has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 60 days after delivering his complete application to the Architectural Reviewer, and (2) if the proposed improvement or modification strictly conforms to requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application. If those conditions are satisfied, the owner may then proceed with the improvement, provided he adheres to the plans and specifications which accompanied his application, and provided he initiates and completes the improvement in a timely manner. In exercising deemed approval, the burden is on the owner to document the Architectural Reviewer's actual receipt of the owner's complete application. Under no circumstance may approval of the Architectural Reviewer be deemed, implied, or presumed for an improvement or modification that would require a variance from the requirements and construction specifications contained in this Declaration and in any design guidelines for the Property in effect at the time of application.

ii) Building Permit. If the application is for work that requires a building permit from a governmental body, the Architectural Reviewer's approval is conditioned on the issuance of the appropriate permit. The Architectural Reviewer's approval of plans and specifications does not mean that they comply with the requirements of the governmental body. Alternatively, governmental approval does not ensure Architectural Reviewer approval.

iii) Neighbor Input. The Architectural Reviewer may solicit comments on the application, including from owners or residents of lots that may be affected by the proposed change, or from which the proposed change may be visible. Whether to solicit comments, from whom to solicit comments, and whether to make the comments available to the applicant is solely at the discretion of the Architectural Reviewer. The Architectural Reviewer is not required to respond to the commenters in ruling on the application.

iv) Declarant Approved. Notwithstanding anything to the contrary in this Declaration, any improvement to the Property made or approved by Declarant during the Development Period is deemed to have been approved by the Architectural Reviewer. If the improvement is of a nature that would require a variance by the Architectural Reviewer, such variance is deemed to have been granted.

## **ARTICLE 6)** **CONSTRUCTION AND USE RESTRICTIONS**

a) VARIANCE. The use of the Property is subject to the restrictions contained in this Article, and subject to rules adopted pursuant to this Article. The board or the Architectural Reviewer, as the case may be, may grant a variance or waiver of a restriction or rule on a case-by-case basis when unique circumstances dictate, and may limit or condition its grant. To be effective, a variance must be in writing. The grant of a variance does not effect a waiver or estoppel of the Association's right to deny a variance in other circumstances. Approval of a variance or waiver may not be deemed, implied, or presumed under any circumstance.

b) CONSTRUCTION RESTRICTIONS. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every lot must have the characteristics described in Exhibit B, which may be treated as the minimum requirements for improving and using a lot. The Architectural Reviewer and the board may promulgate additional rules and restrictions, as well as interpretations, additions, and specifications of the restrictions contained in this Article. An owner should review the Association's architectural restrictions, if any, before planning improvements, repairs, or replacements to his lot and dwelling.

c) LIMITS TO RIGHTS. No right granted to an owner by this Article or by any provision of the Community Documents is absolute. The Community Documents grant rights with the expectation that the rights will be exercised in ways, places, and times that are customary for the neighborhood. This Article and the Community Documents as a whole do not try to anticipate and address every creative interpretation of the restrictions. For example, an owner's right to have a sign advertising the home for sale is not the right to mount the sign on the

chimney and illuminate it with pulsating neon lights. The right of access to a home is not the right to land helicopters on the lot. The rights granted by this Article and the Community Documents are at all times subject to the board's determination that a particular interpretation and exercise of a right is significantly inappropriate, unattractive, or otherwise unsuitable for the neighborhood, and thus constitutes a violation of the Community Documents. In other words, the exercise of a right or restriction must comply with the spirit of the restriction as well as with the letter of the restriction.

d) **SUBJECTIVE STANDARDS.** Standards for some rules and restrictions are inherently subjective, such as what is unattractive or offensive. The Association is not required to honor every resident's individual tolerances. On lifestyle-related rules, the Association may refrain from acting on a perceived violation unless the board determines the violation to be significant or a community-wide problem. The Association may not be compelled by one resident to enforce rules and restrictions against another resident. Residents are expected to deal directly and peaceably with each other about their differences.

e) **ASSOCIATION'S RIGHT TO PROMULGATE RULES.** The Association, acting through its board, is granted the right to adopt, amend, repeal, and enforce reasonable Rules, and penalties for infractions thereof, regarding the occupancy, use, disposition, maintenance, appearance, and enjoyment of the Property. In addition to the restrictions contained in this Article, each lot is owned and occupied subject to the right of the board to establish Rules, and penalties for infractions thereof, governing:

- (1) Use of common areas.
- (2) Use of private streets, if any.
- (3) Hazardous, illegal, or annoying materials or activities on the Property.
- (4) The use of Property-wide services provided through the Association.
- (5) The consumption of utilities billed to the Association.
- (6) The use, maintenance, and appearance of exteriors of dwellings and lots.
- (7) Landscaping and maintenance of yards.
- (8) The occupancy and leasing of dwellings.
- (9) Animals.
- (10) Vehicles.
- (11) Disposition of trash and control of vermin, termites, and pests.
- (12) Anything that interferes with maintenance of the Property, operation of the Association, administration of the Community Documents, or the quality of life for residents.

## **ARTICLE 7)** **ASSOCIATION OPERATIONS**

a) **THE ASSOCIATION.** The existence and legitimacy of the Association is derived from this Declaration and the Bylaws of the Association.

i) **Type.** The Association must be a nonprofit organization, and may be unincorporated or incorporated, as the Association decides from time to time. If the Association is incorporated, the subsequent failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association.

ii) **Name.** Although the initial name of the Association is Hawthorne Place, the Association may operate under any name that is approved by the board and (a) registered by the board with the County Clerk of Oklahoma County, Oklahoma, as an assumed name, or (b) filed by the Association with the Secretary of State as the name of the corporation. The Association may also change its name by amending the Community Documents. Another legal entity with the same name as the Association, or with a name based on the name of the Property is not the Association, which derives its authority from this Declaration.

iii) **Duties.** The duties and powers of the Association are those set forth in the Community Documents, together with the general and implied powers of a property owners association and, as applicable, an unincorporated nonprofit association or a nonprofit corporation organized under the laws of

the State of Oklahoma. Generally, the Association may do any and all things that are lawful and necessary, proper, or desirable in operating for the peace, health, comfort, and general benefit of its members, subject only to the limitations on the exercise of such powers as stated in the Community Documents.

iv) Duration. The Association comes into existence on the date on which this Declaration is recorded in the Real Property Records of Oklahoma County, Oklahoma, and will continue to exist at least as long as this Declaration, as it may be amended, is effective against all or part of the Property.

b) BOARD. The Association is governed by a board of directors. Unless the Association's Bylaws or Articles of Incorporation provide otherwise, the board will consist of at least 3 persons elected by the members at the annual meeting of the Association, or at a special meeting called for that purpose. Unless the Community Documents expressly reserve a right, action, or decision to the owners, Declarant, Builders, or another party, the board acts in all instances on behalf of the Association. Unless the context indicates otherwise, references in the Community Documents to the "Association" may be construed to mean "the Association acting through its board of directors."

c) MEMBERSHIP. Each owner is a member of the Association, ownership of a lot being the sole qualification for membership. Membership is appurtenant to and may not be separated from ownership of the lot. The board may require satisfactory evidence of transfer of ownership before a purported owner is entitled to vote at meetings of the Association. If a lot is owned by more than one person or entity, each co-owner is a member of the Association and may exercise the membership rights appurtenant to the lot. A member who sells his lot under a contract for deed may delegate his membership rights to the contract purchaser, provided a written assignment is delivered to the board. However, the contract seller remains liable for all assessments attributable to his lot until fee title to the lot is transferred.

d) DECISION-MAKING. Any decision or act of the Association may be made by or at the direction of the board, unless the Community Documents reserve the decision or act to the members, the Declarant, or any other person or group. Unless the Community Documents or applicable law provide otherwise, any action requiring approval of the members may be approved (a) at a meeting by owners of at least a majority of the lots that are represented at the meeting, provided notice of the meeting was given to an owner of each lot, or (b) in writing by owners of at least a majority of all lots, provided the opportunity to approve or disapprove was given to an owner of each lot.

e) MANAGER. The board may delegate the performance of certain functions to one or more managers or managing agents of the Association. Notwithstanding a delegation of its functions, the board is ultimately responsible to the members for governance of the Association.

f) COMMUNICATIONS. This Declaration is drafted in an era of rapidly changing communication technologies. Declarant does not intend to limit the methods by which the Association, owners, and residents communicate with each other. Such communications may be by any method or methods that are available and customary. For example, if the Association is required by the Community Documents or applicable law to make information available to owners of all lots, that requirement may be satisfied by posting the information on the Association's website or by using electronic means of disseminating the information, unless applicable law requires a specific method of communication. It is foreseeable that meetings of the Association and voting on issues may eventually be conducted via technology that is not widely available on the date of this Declaration. As communication technologies change, the Association may adopt as its universal standard any technology that is used by owners of at least 85 percent of the lots. Also, the Association may employ multiple methods of communicating with owners and residents.

g) VOTING. One indivisible vote is appurtenant to each lot. The total number of votes equals the total number of lots in the Property. If additional property is made subject to this Declaration, the total number of votes will be increased automatically by the number of additional lots or tracts. Each vote is uniform and equal to the vote appurtenant to every other lot, except during the Declarant Control Period as permitted in the Declarant Rights Article. Cumulative voting is not allowed. Votes may be cast by written proxy, according to the requirements of the Association's Bylaws.

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*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

h) BOOKS & RECORDS. The Association will maintain copies of the Community Documents and the Association's books, records, and financial statements. The Association will make its books and records available to members, on request, for inspection and copying pursuant to the requirements of applicable law.

i) INDEMNIFICATION. Indemnified expenses include, without limitation, reasonable attorneys fees, whether or not a lawsuit is filed, and costs at all court levels, including expenses incurred by a person in establishing the right to be indemnified, defended, and held harmless pursuant to this Declaration. The Association may maintain general liability and directors and officers liability insurance to fund this obligation.

i) Association Leaders. The Association indemnifies every present and former officer, director, committee chair, and committee member (for purposes of this Section, "**Leaders**") against expenses, including attorney's fees, reasonably incurred by or imposed on the Leader in connection with an action, suit, or proceeding to which the Leader is a party by reason of being or having been a Leader. A Leader is not liable for a mistake of judgment, negligent or otherwise. A Leader is liable for his willful misfeasance, malfeasance, misconduct, or bad faith. This right to indemnification does not exclude any other rights to which present or former Leaders may be entitled. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

ii) Indemnity for Common Area Operations. The Association indemnifies, defends, and holds harmless Declarant against any loss, claim, demand, damage, cost, and expense relating to or arising out of the management and operation of the Association, including without limitation, the collection of assessments, the enforcement of the Community Documents, and the operation and maintenance of the Property's common areas.

#### **ARTICLE 8) COVENANT FOR ASSESSMENTS**

a) PURPOSE OF ASSESSMENTS. The Association will use assessments for the general purposes of preserving and enhancing the Property, and for the common benefit of owners and residents, including but not limited to maintenance of real and personal property, management and operation of the Association, and any expense reasonably related to the purposes for which the Property was developed. If made in good faith, the board's decision with respect to the use of assessments is final.

b) PERSONAL OBLIGATION. An owner is obligated to pay assessments levied by the board against the owner or his lot. An owner makes payment to the Association at its principal office or at any other place the board directs. Payments must be made in full regardless of whether an owner has a dispute with the Association, another owner, or any other person or entity regarding any matter to which this Declaration pertains. No owner may exempt himself from his assessment liability by waiver of the use or enjoyment of the common area or by abandonment of his lot. An owner's obligation is not subject to offset by the owner, nor is it contingent on the Association's performance of the Association's duties. Payment of assessments is both a continuing affirmative covenant personal to the owner and a continuing covenant running with the lot.

c) CONTROL FOR ASSESSMENT INCREASES. At least 30 days prior to the effective date of a special assessment or an increase in regular assessments, the board will notify an owner of each lot of the amount of, the budgetary basis for, and the effective date of the special assessment or increase. The special assessment or increase will automatically become effective unless owners of at least a majority of the lots disapprove the special assessment or increase by petition or at a meeting of the Association. In that event, the last-approved budget will continue in effect until a revised budget is approved.

d) TYPES OF ASSESSMENTS. There are 3 types of assessments: Regular, Special, and Individual.

i) Regular Assessments. Regular assessments are based on the annual budget. Each lot is liable for its equal share of the annual budget. If the board does not approve an annual budget or fails to

determine new regular assessments for any year, or delays in doing so, owners will continue to pay the regular assessment as last determined. If during the course of a year the board determines that regular assessments are insufficient to cover the estimated common expenses for the remainder of the year, the board may increase regular assessments for the remainder of the fiscal year in an amount that covers the estimated deficiency. Regular assessments are used for common expenses related to the reoccurring, periodic, and anticipated responsibilities of the Association, including but not limited to:

- (1) Maintenance, repair, and replacement, as necessary, of the common area.
- (2) Utilities billed to the Association.
- (3) Services billed to the Association and serving all lots.
- (4) Taxes on property owned by the Association and the Association's income taxes.
- (5) Management, legal, accounting, auditing, and professional fees for services to the Association.
- (6) Costs of operating the Association, such as telephone, postage, office supplies, printing, meeting expenses, and educational opportunities of benefit to the Association.
- (7) Premiums and deductibles on insurance policies and bonds deemed by the board to be necessary or desirable for the benefit of the Association, including fidelity bonds and directors and officers liability insurance.
- (8) Contributions to the reserve funds.
- (9) Any other expense which the Association is required by law or the Community Documents to pay, or which in the opinion of the board is necessary or proper for the operation and maintenance of the Property or for enforcement of the Community Documents.

ii) Special Assessments. In addition to regular assessments, and subject to the owners' control for assessment increases, the board may levy one or more special assessments against all lots for the purpose of defraying, in whole or in part, common expenses not anticipated by the annual budget or reserve funds. Special assessments do not require the approval of the owners, except that special assessments for the following purposes must be approved by owners of least a majority of the lots:

- (1) Acquisition of real property, other than the purchase of a lot at the sale foreclosing the Association's lien against the lot.
- (2) Construction of additional improvements within the Property, but not replacement of original improvements.
- (3) Any expenditure that may reasonably be expected to significantly increase the Association's responsibility and financial obligation for operations, insurance, maintenance, repairs, or replacement.

iii) Individual Assessments. In addition to regular and special assessments, the board may levy an individual assessment against a lot and its owner. Individual assessments may include, but are not limited to: interest, late charges, and collection costs on delinquent assessments; reimbursement for costs incurred in bringing an owner or his lot into compliance with the Community Documents; fines for violations of the Community Documents; insurance deductibles; transfer-related fees and resale certificate fees; fees for estoppel letters and project documents; reimbursement for damage or waste caused by willful or negligent acts; common expenses that benefit fewer than all of the lots, which may be assessed according to benefit received; fees or charges levied against the Association on a per-lot basis; and "pass through"

expenses for services to lots provided through the Association and which are equitably paid by each lot according to benefit received.

e) BASIS & RATE OF ASSESSMENTS. The share of liability for common expenses allocated to each lot is uniform for all lots, regardless of a lot's location or the value and size of the lot or dwelling; subject, however, to the exemption for Declarant provided below and in the Declarant Rights Article.

f) DECLARANT OBLIGATION. Declarant's obligation for and exemption from assessments is described in the Declarant Rights Article. Unless the Declarant Rights Article creates an affirmative assessment obligation for Declarant, a lot that is owned by Declarant during the Development Period is exempt from mandatory assessment by the Association. Declarant has a right to reimbursement for any assessment paid to the Association by Declarant during the Development Period, but only after the Declarant Control Period. This provision may not be construed to prevent Declarant from making a loan or voluntary monetary donation to the Association, provided it is so characterized.

g) ANNUAL BUDGET. The board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The board will make the budget or its summary available to an owner of each lot, although failure to receive a budget or summary does not affect an owner's liability for assessments. The board will provide copies of the detailed budget to owners who make written request and pay a reasonable copy charge.

h) DUE DATE. The board may levy regular assessments on any periodic basis - annually, semi-annually, quarterly, or monthly. Regular assessments are due on the first day of the period for which levied. Special and individual assessments are due on the date stated in the notice of assessment or, if no date is stated, within 10 days after notice of the assessment is given. Assessments are delinquent if not received by the Association on or before the due date.

i) RESERVE FUNDS. The Association will establish, maintain, and accumulate reserves for operations and for replacement and repair of common area improvements. The Association must budget for reserves and may fund reserves out of regular assessments.

i) Operations Reserves. The Association will endeavor to maintain operations reserves at a level determined by the board to be sufficient to cover the cost of operational or maintenance emergencies or contingencies, such as the full amount of deductibles on insurance policies maintained by the Association.

ii) General Replacement & Repair Reserves. The Association will endeavor to maintain replacement and repair reserves at a level that anticipates the scheduled replacement or major repair of components of all other common areas.

j) ASSOCIATION'S RIGHT TO BORROW MONEY. The Association is granted the right to borrow money, subject to the consent of owners of at least a majority of lots and the ability of the Association to repay the borrowed funds from assessments. To assist its ability to borrow, the Association is granted the right to encumber, mortgage, pledge, or deed in trust any of its real or personal property, and the right to assign its right to future income, as security for money borrowed or debts incurred, provided that the rights of the lender in the pledged property are subordinate and inferior to the rights of the owners hereunder.

k) LIMITATIONS OF INTEREST. The Association, and its officers, directors, managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Oklahoma. Notwithstanding anything to the contrary in the Community Documents or any other document or agreement executed or made in connection with the Association's collection of assessments, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by applicable law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by law, the excess amount will be applied to the reduction of unpaid special and regular assessments, or reimbursed to the owner if those assessments are paid in full.

l) EFFECT OF NONPAYMENT OF ASSESSMENTS. An assessment is delinquent if the Association does not receive payment in full by the assessment's due date. The Association, acting through the board, is responsible for taking action to collect delinquent assessments. From time to time, the Association may delegate some or all of the collection procedures and remedies, as the board in its sole discretion deems appropriate, to the Association's manager, an attorney, or a debt collector. Neither the board nor the Association, however, is liable to an owner or other person for its failure or inability to collect or attempt to collect an assessment. The following remedies are in addition to and not in substitution for all other rights and remedies which the Association has.

i) Interest. Delinquent assessments are subject to interest from the due date until paid, at a rate to be determined by the board from time to time, not to exceed the lesser of 18 percent or the maximum permitted by law. If the board fails to establish a rate, the rate is 10 percent per annum.

ii) Late Fees. Delinquent assessments are subject to reasonable late fees, at a rate to be determined by the board from time to time.

iii) Costs of Collection. The owner of a lot against which assessments are delinquent is liable to the Association for reimbursement of reasonable costs incurred by the Association to collect the delinquent assessments, including attorneys fees and processing fees charged by the manager.

iv) Acceleration. If an owner defaults in paying an assessment that is payable in installments, the Association may accelerate the remaining installments on 10 days' written notice to the defaulting owner. The entire unpaid balance of the assessment becomes due on the date stated in the notice.

v) Suspension of Vote. If an owner's account has been delinquent for at least 30 days, the Association may suspend the right to vote appurtenant to the lot. Suspension does not constitute a waiver or discharge of the owner's obligation to pay assessments.

vi) Money Judgment. The Association may file suit seeking a money judgment against an owner delinquent in the payment of assessments, without foreclosing or waiving the Association's lien for assessments.

vii) Notice to Mortgagee. The Association may notify and communicate with the holder of any lien against a lot regarding the owner's default in payment of assessments.

viii) Foreclosure of Assessment Lien. As provided by this Declaration, the Association may foreclose its lien against the lot by judicial or nonjudicial means.

## **ARTICLE 9) ASSESSMENT LIEN**

a) ASSESSMENT LIEN. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay assessments to the Association. Each assessment is a charge on the lot and is secured by a continuing lien on the lot. Each owner, and each prospective owner, is placed on notice that his title may be subject to the continuing lien for assessments attributable to a period prior to the date he purchased his lot.

b) SUPERIORITY OF ASSESSMENT LIEN. The assessment lien is superior to all other liens and encumbrances on a lot, except only for (a) real property taxes and assessments levied by governmental and taxing authorities, (b) a deed of trust or vendor's lien recorded before this Declaration, (c) a recorded deed of trust lien securing a loan for construction of the original dwelling, and (d) a purchase money vendor's lien or purchase money deed of trust lien recorded before the date on which the delinquent assessment became due. The assessment lien is subordinate and inferior to a recorded deed of trust lien that secures a purchase money mortgage, an FHA-insured mortgage, or a VA-guaranteed mortgage.

c) EFFECT OF MORTGAGEE'S FORECLOSURE. Foreclosure of a superior lien extinguishes the Association's claim against the lot for unpaid assessments that became due before the sale, but does not extinguish the Association's claim against the former owner. The purchaser at the foreclosure sale of a superior lien is liable for assessments coming due from and after the date of the sale, and for the owner's pro rata share of the pre-foreclosure deficiency as an Association expense.

d) NOTICE AND RELEASE OF NOTICE. The Association's lien for assessments is created by recordation of this Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association, at its option, may cause a notice of the lien to be recorded in the Real Property Records of Oklahoma County, Oklahoma. If the debt is cured after a notice has been recorded, the Association will record a release of the notice at the expense of the curing owner.

e) POWER OF SALE. By accepting an interest in or title to a lot, each owner grants to the Association a private power of nonjudicial sale in connection with the Association's assessment lien. The board may appoint, from time to time, any person, including an officer, agent, trustee, substitute trustee, or attorney, to exercise the Association's lien rights on behalf of the Association, including the power of sale. The appointment must be in writing and may be in the form of a resolution recorded in the minutes of a board meeting.

f) FORECLOSURE OF LIEN. The assessment lien may be enforced by judicial or nonjudicial foreclosure. In any foreclosure, the owner is required to pay the Association's costs and expenses for the proceedings, including reasonable attorneys' fees, subject to applicable provisions of the Bylaws and applicable law. The Association has the power to bid on the lot at foreclosure sale and to acquire, hold, lease, mortgage, and convey same.

#### **ARTICLE 10) ENFORCING THE DOCUMENTS**

a) NOTICE AND HEARING. Before the Association may exercise certain of its remedies for a violation of the Community Documents or damage to the Property, the Association must give an owner written notice and an opportunity for a hearing, according to the requirements and procedures in the Bylaws and in applicable law. Notices are also required before an owner is liable to the Association for certain charges, including reimbursement of attorneys fees incurred by the Association.

b) REMEDIES. The remedies provided in this Article for breach of the Community Documents are cumulative and not exclusive. In addition to other rights and remedies provided by the Community Documents and by law, the Association has the following right to enforce the Community Documents, subject to applicable notice and hearing requirements (if any):

i) Nuisance. The result of every act or omission that violates any provision of the Community Documents is a nuisance, and any remedy allowed by law against a nuisance, either public or private, is applicable against the violation.

ii) Fine. The Association may levy reasonable charges, as an individual assessment, against an owner and his lot if the owner or resident, or the owner or resident's family, guests, employees, agents, or contractors violate a provision of the Community Documents. Fines may be levied for each act of violation or for each day a violation continues, and does not constitute a waiver or discharge of the owner's obligations under the Community Documents.

iii) Self-Help. The Association has the right to enter any part of the Property, including lots, to abate or remove, using force as may reasonably be necessary, any improvement, thing, animal, person, vehicle, or condition that violates the Community Documents. In exercising this right, the board is not trespassing and is not liable for damages related to the abatement. The board may levy its costs of abatement against the lot and owner as an individual assessment. The board will make reasonable efforts to give the violating owner prior notice of its intent to exercise self-help. The notice may be given in any manner likely to be received by the owner. Prior notice is not required (a) in the case of emergencies, (b) to remove violative signs, (c) to remove violative debris, or (d) to remove any other violative item or to

abate any other violative condition that is easily removed or abated and that is considered a nuisance, dangerous, or an eyesore to the neighborhood.

iv) Suit. Failure to comply with the Community Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Prior to commencing any legal proceeding, the Association will give the defaulting party reasonable notice and an opportunity to cure the violation.

c) BOARD DISCRETION. The board may use its sole discretion in determining whether to pursue a violation of the Community Documents, provided the board does not act in an arbitrary or capricious manner. In evaluating a particular violation, the board may determine that under the particular circumstances (a) the Association's position is not sufficiently strong to justify taking any or further action; (b) the provision being enforced is or may be construed as inconsistent with applicable law; (c) although a technical violation may exist, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or (d) that enforcement is not in the Association's best interests, based on hardship, expense, or other reasonable criteria.

d) NO WAIVER. The Association and every owner has the right to enforce all restrictions, conditions, covenants, liens, and charges now or hereafter imposed by the Community Documents. Failure by the Association or by any owner to enforce a provision of the Community Documents is not a waiver of the right to do so thereafter. If the Association does waive the right to enforce a provision, that waiver does not impair the Association's right to enforce any other part of the Community Documents at any future time. No officer, director, or member of the Association is liable to any owner for the failure to enforce any of the Community Documents at any time.

e) RECOVERY OF COSTS. The costs of curing or abating a violation are at the expense of the owner or other person responsible for the violation. If legal assistance is obtained to enforce any provision of the Community Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Community Documents or the restraint of violations of the Community Documents, the prevailing party is entitled to recover from the nonprevailing party all reasonable and necessary costs incurred by it in such action, including reasonable attorneys' fees.

#### **ARTICLE 11) MAINTENANCE AND REPAIR OBLIGATIONS**

a) ASSOCIATION MAINTAINS. The Association's maintenance obligations will be discharged when and how the board deems appropriate. The Association maintains, repairs, and replaces, as a common expense, the portions of the Property listed below, regardless of whether the portions are on lots or common areas.

(1) The common areas.

(2) Any real and personal property owned by the Association but which is not a common area, such as a lot owned by the Association.

(3) Any property adjacent to Hawthorne Place if maintenance of same is deemed to be in the best interests of the Association, and if not prohibited by the owner or operator of said property.

(4) Any area, item, easement, or service - the maintenance of which is assigned to the Association by this Declaration or by the plat.

b) OWNER RESPONSIBILITY. Every owner has the following responsibilities and obligations for the maintenance, repair, and replacement of the Property, subject to the architectural control requirements:

i) House Maintenance. Each owner, at the owner's expense, must maintain all improvements on the lot, including but not limited to the dwelling, fences, sidewalks, and driveways. Maintenance includes preventative maintenance, repair as needed, and replacement as needed. Each owner is expected to

maintain his lot's improvements at a level, to a standard, and with an appearance that is commensurate with the neighborhood. Specifically, each owner must repair and replace worn, rotten, deteriorated, and unattractive materials, and must regularly repaint all painted surfaces.

ii) Yard Maintenance. Each owner, at the owner's expense, must regularly maintain the yards on his lot at a level, to a standard, and with an appearance that is commensurate with the neighborhood. "Yards" means all parts of the lot other than the dwelling, including fenced and unfenced portions of the lot.

iii) Avoid Damage. An owner may not do any work or to fail to do any work which, in the reasonable opinion of the board, would materially jeopardize the soundness and safety of the Property, reduce the value of the Property, adversely affect the appearance of the Property, or impair any easement relating to the Property.

iv) Responsible for Damage. An owner is responsible for his own willful or negligent acts and those of his or the resident's family, guests, agents, employees, or contractors when those acts necessitate maintenance, repair, or replacement to the common areas or the property of another owner.

c) OWNER'S DEFAULT IN MAINTENANCE. If the board determines that an owner has failed to properly discharge his obligation to maintain, repair, and replace items for which the owner is responsible, the board may give the owner written notice of the Association's intent to provide the necessary maintenance at owner's expense. The notice must state, with reasonable particularity, the maintenance deemed necessary and a reasonable period of time in which to complete the work. If the owner fails or refuses to timely perform the maintenance, the Association may do so at owner's expense, which is an individual assessment against the owner and his lot. In case of an emergency, however, the board's responsibility to give the owner written notice may be waived and the board may take any action it deems necessary to protect persons or property, the cost of the action being the owner's expense.

d) FENCES & RETAINING WALLS BETWEEN LOTS. A fence or retaining wall shared by adjoining lots is hereafter referred to as a "Party Wall" and, to the extent not inconsistent with the provisions of this Section, is subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

i) Retaining Walls. The portions of this Section that pertain to retaining walls apply only if adjoining lots in portions of Hawthorne Place have elevations that are sufficiently different to require a retaining wall, such as occurs in properties with rolling or sloping terrain. Two adjoining lots with significantly different elevations may have a retaining wall located on or near the dividing line between the two lots and intended to benefit both lots. The lot having the higher elevation is referred to in this Section as the "**Higher Lot**," and the lot having the lower elevation is referred to as the "**Lower Lot**."

ii) Encroachments & Easement. If the Party Wall is on one lot or another due to an error in construction, the Party Wall is nevertheless deemed to be on the dividing line for purposes of this Section. The owner of the lot on each side of the Party Wall hereby grants to the owner of the lot on the other side of the Party Wall the following easements across his lot: (a) a reciprocal access easement for maintenance, repair, replacement, or reconstruction of the Party Wall, as appropriate and necessary to effect the purposes and provisions of this Section, and (b) an easement for the existence and continuance of any encroachment by the Party Wall as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall, so that the encroachment may remain undisturbed as long as the Party Wall stands.

iii) Use & Maintenance by Lower Lot Owner. The owner of the Lower Lot is hereby granted a non-exclusive and perpetual right and easement of enjoyment and use over the exterior surface of the Party Wall for use as a perimeter wall or fence of the Lower Lot. The owner of the Lower Lot is responsible for maintaining the grounds up to the Party Wall, even if the Party Wall is inside the boundaries of the Higher Lot.

iv) Additional Fences in Connection with Retaining Wall. The owner of either the Higher Lot or the Lower Lot may construct a fence in connection with the retaining wall. The owner of the Higher Lot

may construct or install a fence inside the Party Wall on the elevated surface of the Higher Lot, or, with the prior approval of the Lower Lot owner, on the Party Wall itself. The owner of the Lower Lot may construct or install a fence on his lot, provided the fence does not interfere with his duty to maintain the grounds up to the Party Wall. The fences permitted by this Subsection are not considered a part of the Party Wall for purposes of the remainder of this Section.

v) Right to Repair. If the Party Wall is damaged or destroyed from any cause, the owner of either lot may repair or rebuild the Party Wall to its previous condition, and the owners of both lots, their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall.

vi) Maintenance Costs. The owners of the adjoining lots share equally the costs of repair, reconstruction, or replacement of the Party Wall, subject to the right of one owner to call for larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions. If an owner is responsible for damage to or destruction of the Party Wall, that owner will bear the entire cost of repair, reconstruction, or replacement. If an owner fails or refuses to pay his share of costs of repair or replacement of the Party Wall, the owner advancing monies has a right to file a claim of lien for the monies advanced in the Real Property Records of Oklahoma County, Oklahoma, and has the right to foreclose the lien as if it were a mechanic's lien; provided the claim of lien is filed within 90 days after the date of repairs or replacements to the Party Wall, and suit is filed within one year after the date the lien is filed. The right of an owner to contribution from another owner under this Section is appurtenant to the land and passes to the owner's successors in title.

vii) Alterations. The owner of a lot sharing a Party Wall may not alter or change the Party Wall in any manner that affects the use, condition, or appearance of the Party Wall to the other lot, without the prior written consent of the owner of the other lot. The Party Wall will always remain in the same location as when erected, unless a change of location is approved by the owners of both lots.

## **ARTICLE 12)** **MORTGAGEE PROTECTION**

a) PURCHASE MONEY MORTGAGEE RIGHTS. As used in this Article, "**Purchase Money Mortgagee**" means a holder, insurer, or guarantor of a purchase money mortgage secured by a recorded deed of trust lien against a lot, or any renewal, modification, or refinancing thereof. The Purchase Money Mortgagee has the following rights:

- (1) Its lien against the lot is superior to the Association's lien for assessments.
- (2) An action to terminate the legal status of the Property after substantial destruction or condemnation must be approved by a majority of the Purchase Money Mortgagees, in addition to the required consents of owners.
- (3) An action to terminate the legal status for reasons other than substantial destruction or condemnation must be approved by at least two thirds of the Purchase Money Mortgagees.
- (4) A Purchase Money Mortgagee may inspect the Association's books and records, by appointment, during normal business hours.
- (5) A Purchase Money Mortgagee may have an audited statement prepared at its own expense.
- (6) A Purchase Money Mortgagee is exempt from any right of first refusal imposed by the Association with respect to a lease, sale, or transfer of a lot.
- (7) A Purchase Money Mortgagee may attend and address any meeting of the Association which an owner may attend.

*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

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b) COMMUNICATIONS WITH MORTGAGEE. If the Community Documents or public law require the consent of Purchase Money Mortgagees for an act, decision or amendment by the Association, the approval of a Purchase Money Mortgagee is implied when the Purchase Money Mortgagee fails to respond within thirty (30) days after receiving the Association's written request for approval of a proposed amendment, provided the Association's request was delivered by certified or registered mail, return receipt requested.

### **ARTICLE 13)** **AMENDMENTS**

a) CONSENTS REQUIRED. As permitted by this Declaration, certain amendments of this Declaration may be executed by Declarant alone, or by the board alone. Otherwise, amendments to this Declaration must be approved by owners of at least a majority of the lots. Approval of owners does not require that the amendment be signed by the consenting owners, or that consents be executed and acknowledged by the approving owners.

b) METHOD OF AMENDMENT. For an amendment that requires the approval of owners, this Declaration may be amended by any method selected by the board from time to time, pursuant to the Bylaws, provided the method gives an owner of each lot the substance if not exact wording of the proposed amendment, a description of the effect of the proposed amendment, and an opportunity to vote for or against the proposed amendment.

c) EFFECTIVE. To be effective, an amendment approved by the owners or by the board must be in the form of a written instrument (a) referencing the name of the Property, the name of the Association, and the recording data of this Declaration and any amendments hereto; (b) signed and acknowledged by an officer of the Association, certifying the requisite approval of owners or directors and, if required, Eligible Mortgagees; and (c) recorded in the Real Property Records of Oklahoma County, Oklahoma, except as modified by the following section.

d) SPECIAL PROTECTIONS. Notwithstanding the right of owners to amend this Declaration, Declarant has an exclusive right to unilaterally amend this Declaration during the Development Period. No amendment may affect Declarant's rights under this Declaration without Declarant's written and acknowledged consent, which must be part of the recorded amendment instrument. Because this Declaration contains a number of provisions that expressly benefit Builders, no amendment may affect a Builder's express rights under this Declaration without Builder's written and acknowledged consent, which must be part of the recorded instrument, if one or more lots are owned by a Builder or are under contract to a Builder at the time of a proposed amendment. This Section may not be amended without the written and acknowledged consents of Declarant and any Builder who owns or who has contracted to purchase one or more lots.

e) MERGER. Merger or consolidation of the Association with another association must be evidenced by an amendment to this Declaration. The amendment must be approved by owners of at least a majority of the lots. Upon a merger or consolidation of the Association with another association, the property, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as a surviving association pursuant to the merger. The surviving or consolidated association may administer the provisions of the Community Documents within the Property, together with the covenants and restrictions established upon any other property under its jurisdiction. No merger or consolidation, however, will effect a revocation, change, or addition to the covenants established by this Declaration within the Property.

f) TERMINATION. Termination of the terms of this Declaration and the status of the Property as a planned unit development are according to the following provisions. In the event of substantially total damage, destruction, or public condemnation of the Property, an amendment to terminate must be approved by owners of at least two-thirds of the lots. In the event of public condemnation of the entire Property, an amendment to terminate may be executed by the board without a vote of owners. In all other circumstances, an amendment to terminate must be approved by owners of at least 80 percent of the lots.

g) CONDEMNATION. In any proceeding, negotiation, settlement, or agreement concerning condemnation of the common area, the Association will be the exclusive representative of the owners. The Association may use condemnation proceeds to repair and replace any damage or destruction of the common area,

real or personal, caused by the condemnation. Any condemnation proceeds remaining after completion, or waiver, of the repair and replacement will be deposited in the Association's reserve funds.

## **ARTICLE 14)** **DISPUTE RESOLUTION**

a) **INTRODUCTION & DEFINITIONS.** The Association, the owners, Declarant, Builders, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Property and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, each Party hereby covenants and agrees that this Article applies to all claims as hereafter defined. As used in this Article only, the following words, when capitalized, have the following specified meanings:

i) "**Claim**" means any claim, grievance, or dispute between Parties involving the Properties, except Exempt Claims as defined below, and including without limitation:

- (1) Claims arising out of or relating to the interpretation, application, or enforcement of the Community Documents.
- (2) Claims relating to the rights and/or duties of Declarant as Declarant under the Community Documents.
- (3) Claims relating to the design, construction, or maintenance of the Property.

ii) "**Claimant**" means any Party having a Claim against any other Party.

iii) "**Exempt Claims**" means the following claims or actions, which are exempt from this Article:

- (1) The Association's claim for assessments, and any action by the Association to collect assessments.
- (2) An action by a Party to obtain a temporary restraining order or equivalent emergency equitable relief, and such other ancillary relief as the court deems necessary to maintain the status quo and preserve the Party's ability to enforce the provisions of this Declaration.
- (3) Enforcement of the easements, architectural control, maintenance, and use restrictions of this Declaration.
- (4) A suit to which an applicable statute of limitations would expire within the notice period of this Article, unless a Party against whom the Claim is made agrees to toll the statute of limitations as to the Claim for the period reasonably necessary to comply with this Article.

iv) "**Respondent**" means the Party against whom the Claimant has a Claim.

b) **MANDATORY PROCEDURES.** **Claimant may not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of its Claim until Claimant has complied with the procedures of this Article.**

c) **NOTICE.** Claimant must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (a) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (b) the basis of the Claim (i.e., the provision of the Community Documents or other authority out of which the Claim arises); (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) that the Notice is given pursuant to this Section.

d) NEGOTIATION. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually-acceptable place and time to discuss the Claim. At such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the property that is subject to the Claim for the purposes of inspecting the property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the property to take and complete corrective action.

e) MEDIATION. If the parties negotiate but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least 5 years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Claimant is deemed to have waived the Claim, and Respondent is released and discharged from any and all liability to Claimant on account of the Claim.

f) TERMINATION OF MEDIATION. If the Parties do not settle the Claim within 30 days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate administrative proceedings on the Claim, as appropriate.

g) ALLOCATION OF COSTS. Except as otherwise provided in this Section, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, and Mediation sections above, including its attorneys fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator.

h) ENFORCEMENT OF RESOLUTION. Any settlement of the Claim through negotiation or mediation will be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of the agreement, then the other Party may file suit or initiate administrative proceedings to enforce the agreement without the need to again comply with the procedures set forth in this Article. In that event, the Party taking action to enforce the agreement is entitled to recover from the non-complying Party all costs incurred in enforcing the agreement, including, without limitation, attorneys fees and court costs.

i) GENERAL PROVISIONS. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim. A Party having an Exempt Claim may submit it to the procedures of this Article.

j) LITIGATION APPROVAL & SETTLEMENT. To encourage the use of alternate dispute resolution and discourage the use of costly and uncertain litigation, the initiation of any judicial or administrative proceeding by the Association is subject to the following conditions in addition to and notwithstanding the above alternate dispute resolution procedures. Each owner, by accepting an interest in or title to a lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to be bound by this Section. This Section may not be amended without the approval of owners of at least 75 percent of the lots.

i) Owner Approval. The Association may not initiate any judicial or administrative proceeding without the prior approval of owners of at least a majority of the lots, except that no such approval is required (a) to enforce provisions of this Declaration, including collection of assessments; (b) to challenge condemnation proceedings; (c) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association; (d) to defend claims filed against the Association or to assert counterclaims in a proceedings instituted against the Association; or (e) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of owners in order to preserve the status quo.

ii) Higher Approval of Certain Suits. Also, the Association may not initiate any judicial or administrative proceeding against Declarant, a Builder, Association officers and directors, or the managing agent of the Association without the approval of owners representing at least 75 percent of the lots.

iii) Funding Litigation. Except in the case of a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to levy a special assessment, the Association must levy a special assessment to fund the estimated costs of litigation prior to initiating a judicial or administrative proceeding. The Association may not use its annual operating income, reserve funds, or savings to fund litigation, unless the Association's annual budget or a savings account was established and funded from its inception as a litigation reserve fund.

iv) Settlement. The board, on behalf of the Association and without the consent of owners, is hereby authorized to negotiate settlement of litigation, and may execute any document related thereto, such as settlement agreements and waiver or release of claims.

#### **ARTICLE 15) DECLARANT RIGHTS**

a) GENERAL PROVISIONS. Declarant intends the Declaration to be perpetual and understands that provisions pertaining to the initial development, construction, marketing, and control of the Property will become obsolete when the roles of Declarant and Builder are complete. As a courtesy to future users of the Declaration, who may be frustrated by then-obsolete terms, Declarant is compiling the Declarant and Builder-related provisions in this Article.

i) General Reservation & Construction. Notwithstanding other provisions of the Community Documents to the contrary, nothing contained therein may be construed to, nor may any mortgagee, other owner, or the Association, prevent or interfere with the rights contained in this Article which Declarant hereby reserves exclusively unto itself and Builders, and their respective successors and assigns. In case of conflict between this Article and any other Community Document, this Article controls. The terms and provisions of this Article must be construed liberally to give effect to Declarant's intent to protect the interests of Declarant and Builders in the Property.

ii) Purpose of Development and Declarant Control Periods. This Article gives Declarant and Builders certain rights during the Development Period and the Declarant Control Period to ensure a complete and orderly buildout and sellout of Hawthorne Place, which is ultimately for the benefit and protection of owners and mortgagees. Declarant may not use its control of the Association and the Property for an advantage over the owners by way of retention of any residual rights or interests in the Association or through the creation of any contractual agreements which the Association may not terminate without cause with 90 days' notice.

b) DEFINITIONS. As used in this Article and elsewhere in the Community Documents, the following words and phrases have the following specified meanings:

i) **"Builder"** means a person or entity which purchases, or contracts to purchase, a lot from Declarant or from a Builder for the purpose of constructing a dwelling for resale or under contract to an owner other than Declarant.

ii) **"Declarant Control Period"** means that period of time during which Declarant controls the operation and management of the Association. The duration of the Declarant Control Period will be from the date this Declaration is recorded for a maximum period not to exceed the earlier of (1) seven years from date this Declaration is recorded, or (2) 60 days after all house lots in Hawthorne Place have been improved with houses and title to 50 percent of the house lots in Hawthorne Place have been conveyed to owners other than Declarant or Builders. Declarant may terminate the Declarant Control Period at any earlier time by publicly recording a notice of termination, provided, however, that if any Builder-owned house lot in Hawthorne Place has not been improved with a house, the Builder must agree in writing to the earlier time for termination.

*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

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iii) **"Development Period"** means the 12-year period beginning the date this Declaration is recorded, during which Declarant has certain rights pursuant to this Article, such as rights relating to development, construction, expansion, and marketing of Hawthorne Place. The Development Period is for a term of years and does not require that Declarant own land described in Exhibit A. The Development Period is different from and longer than the Declarant Control Period. Declarant may terminate the Development Period at any earlier time by recording a notice of termination, provided, however, that if any house lot in Hawthorne Place is owned by a Builder, the Builder must agree in writing to the earlier time for termination.

iv) **"Unilaterally"** means that the Declarant may take the authorized action without the consent, approval, vote, or joinder of any other person, such as owners, mortgagees, and the Association. Certain provisions in this Article and elsewhere in the Community Documents authorize the Declarant to act unilaterally. Unilateral action by Declarant is favored for purposes of efficiency and to protect the interests of Declarant.

c) DECLARANT CONTROL PERIOD RESERVATIONS - GOVERNANCE. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

i) Incorporation of Association. Declarant will incorporate the Association as an Oklahoma nonprofit corporation before the end of the Declarant Control Period.

ii) Officers & Directors. During the Declarant Control Period, Declarant may appoint, remove, and replace any officer or director of the Association, none of whom need be members or owners, and each of whom is indemnified by the Association as a "Leader." Declarant's unilateral right to remove and replace officers and directors applies to officers and directors who were elected or designated by lot owners other than Declarant, as well as to Declarant's appointees. During the Declarant Control Period, the Board may consist of 3 persons.

iii) Association Meetings. During the Declarant Control Period, meetings of the Association may be held at a location, date, and time that is convenient to Declarant, whether or not it is mutually convenient for the owners.

iv) Transition Meeting. Within 60 days after the end of the Declarant Control Period, or sooner at the Declarant's option, Declarant will call a transition meeting of the members of the Association for the purpose of electing, by vote of the owners, directors to the board. Written notice of the transition meeting must be given to an owner of each lot at least 10 days before the meeting. For the transition meeting, owners of 10 percent of the lots constitute a quorum. The directors elected at the transition meeting will serve until the next annual meeting of the Association or a special meeting of the Association called for the purpose of electing directors, at which time the staggering of terms will begin.

d) DECLARANT CONTROL PERIOD RESERVATIONS - FINANCIAL. Declarant reserves the following powers, rights, and duties during the Declarant Control Period:

i) Association Budget. During the Declarant Control Period, the Declarant-appointed board will establish a projected budget for Hawthorne Place as a fully developed, full constructed, and fully occupied residential community with a level of services and maintenance that is typical for similar types of developments in the general area of the Property, using cost estimates that are current for the period in which the budget is prepared.

ii) Budget Funding. During the Declarant Control Period only, Declarant is responsible for the difference between the Association's actual operating expenses and the regular assessments received from owners, and will provide any additional funds necessary to pay actual cash outlays of the Association. Declarant's obligation to fund the difference in the Association's operating expenses does not require Declarant to fund reserve accounts.

*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

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iii) Declarant Assessments & Reserves. During the Declarant Control Period, any real property owned by Declarant is not subject to assessment by the Association. During the Declarant Control Period, Declarant is not required to make contributions to the Association's reserve funds for the lots owned by Declarant.

iv) Budget Control. During the Declarant Control Period, the right of owners to veto assessment increases or special assessments is not effective and may not be exercised.

e) DEVELOPMENT PERIOD RESERVATIONS. Declarant reserves the following easements and rights, exercisable at Declarant's sole discretion, at any time during the Development Period:

i) Withdrawal. During the Development Period, Declarant may withdraw real property from the Property and the effect of this Declaration (1) if the owner of the withdrawn property consents to the withdrawal, and (2) if the withdrawal does not significantly and detrimentally change the appearance, character, operation, or use of the Property.

ii) Changes in Development Plan. Declarant may modify the initial development plan to respond to perceived or actual changes and opportunities in the marketplace. Subject to approval by (1) a governmental entity, if applicable, and (2) the owner of the land or lots to which the change would directly apply (if other than Declarant), Declarant may (a) change the sizes, dimensions, and configurations of lots and streets; (b) change the minimum dwelling size; (c) change the building setback requirements; and (d) eliminate or modify any other feature of the Property.

iii) Architectural Control. During the Development Period, Declarant has the absolute right to serve as the Architectural Reviewer pursuant to Article 5. Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under Article 5 and this Article to (1) an architectural control committee appointed by the board, or (2) a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant (1) to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (2) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant also has the unilateral right to exercise architectural control over vacant lots in North Rose Lake Villas. Neither the Association, the board of directors, nor a committee appointed by the Association or board (no matter how the committee is named) may involve itself with the approval of new homes and related improvements on vacant lots.

iv) Amendment. During the Development Period, Declarant may amend this Declaration and the other Community Documents, without consent of other owners or any mortgagee, for any purpose.

v) Completion. During the Development Period, Declarant has (1) the right to complete or make improvements indicated on the plat; (2) the right to sell or lease any lot owned by Declarant; and (3) an easement and right to erect, construct, and maintain on and in the common area and lots owned or leased by Declarant whatever Declarant determines to be necessary or advisable in connection with the construction, completion, management, maintenance, leasing, and marketing of Hawthorne Place, including, without limitation, parking areas, temporary buildings, temporary fencing, portable toilets, storage areas, dumpsters, trailers, and commercial vehicles of every type.

vi) Easement to Inspect & Right to Correct. During the Development Period, Declarant reserves for itself and for Builders the right, but not the duty, to inspect, monitor, test, redesign, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. Declarant or Builder, as applicable, will promptly repair, at its sole expense, any damage resulting from the exercise of this right.

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*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

vii) Promotion. During the Development Period, Declarant reserves for itself and for Builders an easement and right to place or install signs, banners, flags, display lighting, potted plants, exterior decorative items, seasonal decorations, temporary window treatments, and seasonal landscaping on the Property, including items and locations that are prohibited to other owners and residents, for purposes of promoting, identifying, and marketing Hawthorne Place and/or the houses, lots, developments, or other products of Declarant or Builders located outside the Property. Declarant reserves for itself and for Builders an easement and right to maintain, relocate, replace, or remove the same from time to time within the Property. Declarant also reserves for itself and for Builders the right to sponsor marketing events at the Property to promote the sale of lots.

viii) Offices. During the Development Period, Declarant reserves for itself and for Builders the right to use dwellings owned or leased by Declarant or Builder as models, storage areas, and offices for the marketing, management, maintenance, customer service, construction, and leasing of the Property and/or developments or other products located outside the Property. Also, Declarant reserves for itself and for Builders the easement and right to make structural changes and alterations on and to lots and dwellings used by Declarant or Builders as models, storage areas, and offices, as may be necessary to adapt them to the uses permitted herein.

ix) Access. During the Development Period, Declarant has an easement and right of ingress and egress in and through the Property for purposes of constructing, maintaining, managing, and marketing Hawthorne Place, and for discharging Declarant's obligations under this Declaration. Declarant also has the right to provide a reasonable means of access for the homebuying public through any existing or future gate that restricts vehicular access to the Property in connection with the active marketing of lots and homes by Declarant, including the right to require that the gate be kept open during certain hours and/or on certain days. This provision may not be construed as an obligation or intent to gate the Property.

x) Utility Easements. During the Development Period, Declarant may grant permits, licenses, and easements over, in, on, under, and through the Property for utilities, roads, and other purposes necessary for the proper development and operation of the Property. Declarant reserves the right to make changes in and additions to the easements on any lot, as shown on the plat, to more efficiently or economically install utilities or other improvements. Utilities may include, but are not limited to, water, sewer, trash removal, electricity, gas, telephone, television, cable, internet service, and security. To exercise this right as to land that is not a common area of the Property or not owned by Declarant, Declarant must have the prior written consent of the land owner.

xi) Assessments. For the duration of the Development Period after the Declarant Control Period ends, each lot owned by Declarant or by a Builder is subject to mandatory assessment by the Association in the same manner as the lot of any other owner.

xii) Land Transfers. During the Development Period, any transfer of an interest in the Property to or from Declarant is not subject to any transfer-related provision in the Community Documents, including without limitation an obligation for transfer or resale certificate fees, and the transfer-related provisions of Article 7 of this Declaration.

xiii) Association Membership. Declarant is the initial member of the Association and remains a member for the duration of the Development Period. If Declarant does not own a lot, Declarant's membership is in the capacity of "ex officio."

f) DIFFERENT STANDARDS. Declarant has the right (1) to establish specifications for the construction of all initial improvements in Hawthorne Place, (2) to establish different specifications for each neighborhood within the Property, and (3) to grant variances or waivers from community-wide standards to certain neighborhoods of the Property.

g) COMMON AREAS. Any initial common area improvement will be installed, constructed, or authorized by Declarant, the cost of which is not a common expense of the Association. For every common area capable of being conveyed to the Association, Declarant will convey title to the common area to the Association by one or more

deeds - with or without warranty. At the time of conveyance to the Association, the common areas will be free of encumbrance except for the property taxes accruing for the year of conveyance. Declarant's conveyance of title is a ministerial task that does not require and is not subject to acceptance by the Association or the owners. The transfer of control of the Association at the end of the Declarant Control Period is not a transfer of common areas requiring inspection, evaluation, acceptance, or approval of common area improvements by the owners.

h) RELATIONSHIP WITH BUILDERS. Declarant does not intend to construct dwellings on the lots. Instead, Declarant intends to sell the lots to one or more Builders to improve the lots with dwellings to be sold and occupied. From time to time, Declarant may invite a Builder to share in the exercise of any, some, or all of its easements and rights, without any formality other than the consent of Declarant and Builder. Notwithstanding such sharing, a Builder will not become a Successor Declarant, or assume the duties and liabilities of Declarant under this Declaration unless Builder and Declarant join in an instrument that assigns and transfers Declarant rights and duties under this Declaration, signed and acknowledged by both Declarant and Builder, and recorded in the Real Property Records of Oklahoma County, Oklahoma.

i) Builder Obligations. During the Declarant Control Period only, Declarant has the right but not the duty (a) to reduce or waive the assessment obligation of a Builder, and (b) to exempt a Builder from any or all liabilities for transfer-related fees charged by the Association, provided the agreement is in writing. Absent such an exemption, any Builder who owns a lot is liable for all assessments and other fees charged by the Association in the same manner as any owner.

ii) Approval of Builder Plans. If a Builder intends to construct a number of pre-designed homes in a phase of the Property, the Builder may submit the set of house plans and elevations to Declarant for approval by the Architectural Reviewer. Such plans may be submitted and approved prior to Builder's purchase of lots in the Property. House plans and elevations that are pre-approved by Declarant may be constructed by Builder without re-submitting plans on a lot by lot basis as the houses are constructed, unless the actual house plan or elevation deviates substantially from the pre-approved plan and elevation. Examples of substantial deviation include (a) reversing a garage from rear entry to front entry, or vice versa, (b) reducing the size of the dwelling by more than 15 percent, (c) reducing the amount of masonry exterior material by more than 15 percent, and (d) replacing a garage with a carport.

iii) Individual Lot Application. Builder must apply to the Architectural Reviewer for approval of any substantial modifications or variations from or additions to the pre-approved plans for the Property, as well as the plot plan for each house. Builder may presume that its request has been approved by the Architectural Reviewer if Builder has not received the Architectural Reviewer's written response - approving, denying, or requesting additional information - within 45 calendar days after delivering his complete application to the Architectural Reviewer.

iv) Builder Signs. During the Development Period, Declarant also reserves (a) the right to permit Builders to place signs and promotional materials on the Property and (b) the right to exempt a Builder from the sign restriction in this Declaration. Any sign used by Builders in the Property may be approved in writing by Declarant prior to installation, and is subject to summary removal if not approved and if Declarant finds it objectionable. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message.

i) DECLARANT'S RIGHT TO INSPECT & CORRECT ACCOUNTS. For a period of 5 years after termination of the Declarant Control Period, Declarant reserves for itself and for Declarant's accountants and attorneys, the right, but not the duty, to inspect, correct, and adjust the Association financial records and accounts from the Declarant Control Period. The Association may not refuse to accept an adjusting or correcting payment made by or for the benefit of Declarant. By way of illustration but not limitation, Declarant may find it necessary to recharacterize an expense or payment to conform to Declarant's obligations under the Community Documents or applicable State law. This Section may not be construed to create a duty for Declarant or a right for the Association, and may not be amended without Declarant's written and acknowledged consent. In support of this reservation, each owner, by accepting an interest in or title to a lot, hereby grants to Declarant a right of access to the

Association's books and records that is independent of Declarant's rights during the Declarant Control and Development Periods.

j) SUCCESSOR DECLARANT. Declarant may designate one or more Successor Declarants for specified designated purposes and/or for specified portions of the Property, or for all purposes and all of the Property. To be effective, the designation must be in writing, signed and acknowledged by Declarant and Successor Declarant, and recorded in the Real Property Records of Oklahoma County, Oklahoma. Declarant (or Successor Declarant) may subject the designation of Successor Declarant to limitations and reservations. Unless the designation of Successor Declarant provides otherwise, a Successor Declarant has the rights of Declarant under this Section and may designate further Successor Declarants.

## **ARTICLE 16)** **GENERAL PROVISIONS**

a) COMPLIANCE. The owners hereby covenant and agree that the administration of the Association will be in accordance with the provisions of the Community Documents and applicable laws, regulations, and ordinances, as same may be amended from time to time, of any governmental or quasi-governmental entity having jurisdiction over the Association or Property.

b) HIGHER AUTHORITY. The Community Documents are subordinate to federal and state law, and local ordinances. Generally, the terms of the Community Documents are enforceable to the extent they do not violate or conflict with local, state, or federal law or ordinance. In the event of a conflict between the Community Documents, the hierarchy of authority is as follows: this Declaration (highest), Association's Articles of Incorporation, Bylaws, and the Rules (lowest). Within the Declaration, the Declarant Rights Article has the highest authority.

c) NOTICE. Any demand or written notice required or permitted by this Declaration may be sent by electronic, ordinary, or certified mail, postage prepaid, or by any other method or combination of methods permitted or required by applicable law. If mailed, the notice is deemed delivered when deposited in the U.S. mail addressed to the member at the address shown on the Association's records. If transmitted by fax or email, the notice is deemed delivered on successful transmission of the facsimile or electronic correspondence. The notice must be sent to the party's last known address as it appears on the records of the Association at the time of transmission. If an owner fails to give the Association an effective address, the notice may be sent to the address of the owner's lot. If the Association properly transmits the notice, the owner is deemed to have been given notice whether or not he actually receives it.

d) CHANGING TECHNOLOGY. The Community Documents are drafted at the end of an era that uses ink on paper to communicate, to give notice, and to memorialize decisions. The next era of communications may be paperless, relying on electronic communications for many activities that are customarily papered on the date of this Declaration. As technology changes, the terms of the Community Documents that pertain to communications, notices, and documentation of decisions may be interpreted and applied in ways that are consistent with and customary for the then-current technology for standard business practices, without necessity of amending the Community Document.

e) LIBERAL CONSTRUCTION. The terms and provision of each Community Document are to be liberally construed to give effect to the purposes and intent of the Community Document. All doubts regarding a provision, including restrictions on the use or alienability of property, will be resolved first to give effect to Declarant's intent to protect Declarant's interests in the Property, and second in favor of the operation of the Association and its enforcement of the Community Documents, regardless which party seeks enforcement.

f) RULES OF CONSTRUCTION. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which remains in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general. The captions of articles and sections are inserted only for convenience and are in no way to be construed as defining or modifying the text to which they refer. Unless the context provides otherwise, a reference to a gender includes all genders. Similarly, a reference to the singular includes the plural, the plural the singular, where the same would be appropriate.

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*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

g) DURATION. Unless terminated or amended by owners as permitted herein, the provisions of this Declaration run with and bind the Property, and will remain in effect perpetually to the extent permitted by law.

*(Executed on next page.)*

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*During the Development Period, the Declarant Rights Article has priority over the rest of this Declaration.*

**SIGNED AND ACKNOWLEDGED**

SIGNED on this 4<sup>th</sup> day of June 2008.

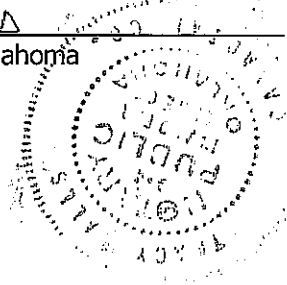
**QUICK-MINCEY PROPERTIES, II, L.L.C,**  
an Oklahoma limited liability company

By: [Signature]  
J. Gary Nolan Quick, II, Member/Manager

STATE OF OKLAHOMA     §  
  §  
COUNTY OF OKLAHOMA   §

This instrument was acknowledged before me on the 4<sup>th</sup> day of June 2008 by J. Gary Nolan Quick, II, Member/Manager on behalf of the limited liability company.

Tracy Walls  
Notary Public, State of Oklahoma  
1-13-10  
#02000002



**EXHIBIT A**  
**DESCRIPTION OF SUBJECT LAND**

HAWTHORNE PLACE

This tract described by metes and bounds in the Legal Description on the Final Plat of Hawthorne Place, an addition to Oklahoma City, according to the Plat Records, Oklahoma County, Oklahoma, including the following common areas and 67 house lots:

*(End of Exhibit A)*

**EXHIBIT B**  
**CONSTRUCTION SPECIFICATIONS**  
**FOR HAWTHORNE PLACE**

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All improvements on a lot must (1) comply with any applicable governmental ordinances and codes, (2) have a building permit issued by the appropriate governmental agency, if the type of improvement requires a permit, and (3) have the Architectural Reviewer's prior written approval. These 3 requirements are independent - one does not ensure or eliminate the need for another. The lot owner and/or owner's contractor must comply with all 3 requirements. Without the Architectural Reviewer's prior written approval for a variance, improvements constructed on every lot must have the following characteristics:

A.1. HOUSES. The principal improvement on a lot must be one detached single family dwelling. The dwelling size, setbacks, and exterior materials must comply with the applicable ordinances and with any higher standards established by the Architectural Reviewer. The total air-conditioned living area of the dwelling, as measured to the outside of exterior walls, but exclusive of open porches, garages, patios, and detached accessory buildings, may not be less than 1,200 square feet.

A.2. NEW CONSTRUCTION. The dwelling must be constructed on the lot. A dwelling or addition constructed elsewhere may not be moved onto a lot. Factory-built homes are not permitted, even though assembled or finished on the lot. However, components of houses (such as roof trusses) may be manufactured off-site. The construction of a dwelling must be started promptly after the Architectural Reviewer approves the dwelling's plans and specifications. At the start of construction - but not before - building material to be used in the construction may be stored on the lot. Once started, the dwelling and all improvements on the lot must be completed with due diligence.

A.3. EXTERIOR WALL MATERIALS. The type, quality, and color of exterior wall materials must be approved by the Architectural Reviewer. Generally, at least 70 percent of the dwelling's total exterior area, minus windows and doors, must be masonry or masonry veneer, such as brick, stone, or stucco.

A.4. ROOFS. Roofs must be covered with material having a manufacturer's warranty of at least 20 years. The use of fiberglass shingles is permitted. The color of roofing material must be weatherwood or an equivalent earth tone color. The Architectural Reviewer may permit or require other weights, materials, and colors. Minimum of 6/12 pitch on roof framing.

A.5. GARAGE & DRIVEWAY. Each dwelling must have an attached garage for at least two standard-size cars. The driveway must be surfaced with concrete.

A.6. CARPORTS. A carport may not be installed, constructed, or maintained on a lot without the prior written approval of the Architectural Reviewer.

A.7. ACCESSORIES. Installation of all exterior items and surfaces, including address numbers, decorative hardware, external ornamentation, lights fixtures, and exterior paint and stain, is subject to the Architectural Reviewer's prior approval, including approval of design, color, materials, and location.

A.8. MAILBOXES. If curbside boxes are permitted by postal authorities, the Architectural Reviewer may require a uniform size and style of mailbox and pedestal.

A.9. UTILITIES. All utility lines and equipment must be located underground, except for: (1) elevated or surface lines or equipment required by a public utility or the city; (2) elevated or surface lines or equipment installed by Declarant as part of the development plan; and (3) surface equipment necessary to maintain, operate, or read underground facilities, such as meters, risers, service pedestals, and transformers. The Architectural Reviewer may require that utility meters, risers, pedestals, and transformers be visually screened from the street and neighboring lots. Each lot will use city water and sewage systems. Individual water supply and sewage disposal systems are not permitted.

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A.10. AIR CONDITIONERS. Air conditioning equipment may not be installed in the front yard of a dwelling. Window units are prohibited. The Architectural Reviewer may require that air-conditioning equipment and apparatus be visually screened from the street and neighboring lots.

A.11. NO SUBDIVISION. No lot may be subdivided. One or more lots may be replatted with the approval of all owners of the lots directly affected by the replatting, and subject to the approval of the city. The parties executing the replat will provide a copy of the recorded replat to the Association. Replatting of lots may not alter the number of votes and assessments allocated to the lots as originally platted. If replatting reduces the number of lots by combining lots, the joined lot will have the votes and assessments allocated to the lots as originally platted.

A.12. DEBRIS. No lot or other part of the Property may be used a dumping ground. Waste materials incident to construction or repair of improvements on a lot may be stored temporarily on the lot during construction while work progresses and must be removed when construction or repair is complete.

*(End of Exhibit B)*

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**EXHIBIT C**  
**USE RESTRICTIONS FOR**  
**HAWTHORNE PLACE**

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A.1. **ACCESSORY SHEDS.** Accessory structures, such as dog houses, gazebos, storage sheds, playhouses, and greenhouses, are permitted as long as they are typical for the Property in terms of type, number, size, location, color, material, and height. Accessory structures may not be located in front yards or in unfenced portions of side yards facing streets. If an accessory structure that is visible from a street or another lot is installed on a lot without the prior written approval of the Architectural Reviewer, the Architectural Reviewer reserves the right to determine that the accessory structure is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to screen it or to remove it.

A.2. **ANIMAL RESTRICTIONS.** No animal, bird, fish, reptile, or insect of any kind may be kept, maintained, raised, or bred anywhere on the Property for any commercial purpose or for food. The only animals permitted on the Property are customary domesticated household pets, which may be kept for personal companionship subject to rules adopted by the board. The board may adopt, amend, and repeal rules regulating the types, sizes, numbers, locations, and behavior of animals at the Property. If the rules fail to establish animal occupancy quotas, no more than 4 dogs and/or cats may be maintained on each lot. Pets must be kept in a manner that does not disturb the peaceful enjoyment of residents of other lots. Pets must be maintained inside the dwelling, and may be kept in a fenced yard only if they do not disturb residents of other lots. Resident is responsible for the removal of his pet's wastes from the Property. Unless the Rules provide otherwise, a resident must prevent his pet from relieving itself on the common area or the lot of another owner.

A.3. **ANNOYANCE.** No lot or common area may be used in any way that: (1) may reasonably be considered annoying to neighbors; (2) may be calculated to reduce the desirability of the Property as a residential neighborhood; (3) may endanger the health or safety of residents of other lots; (4) may result in the cancellation of insurance on the Property; or (5) violates any law. The board has the sole authority to determine what constitutes an annoyance.

A.4. **APPEARANCE.** Both the lot and the dwelling must be maintained in a manner so as not to be unsightly when viewed from the street. The Architectural Reviewer is the arbitrator of acceptable appearance standards.

A.5. **BUSINESS USE.** A resident may use a dwelling for business uses, such as telecommuting, personal business, and professional pursuits, provided that: (1) the uses are incidental to the primary use of the dwelling as a residence; (2) the uses conform to applicable governmental ordinances; (3) the uses do not entail visits to the lot by employees or the public in quantities that materially increase the number of vehicles parked on the street; and (4) the uses do not interfere with the residential use and enjoyment of neighboring lots by other residents.

A.6. **DECLARANT & BUILDER PRIVILEGES.** Declarant has reserved a number of rights and privileges for itself and for Builders to use the Property in ways that are not available to other owners and residents, as provided in the Declarant Rights Article of this Declaration. The exercise of a Development Period right by Declarant or a Builder does not constitute waiver or abandonment of the restriction by the Association as applied to owners other than Declarant.

A.7. **DRAINAGE.** No person may interfere with the established drainage pattern over any part of the Property unless an adequate alternative provision for proper drainage has been approved by the board.

A.8. **FENCES.** Collectively, fences on individual lots create the "face" of the neighborhood from certain directions. Although each owner is solely responsible for the fencing on his lot, a portion of his fencing may serve as a segment in the continuous border around the Property or along a stretch of roadway or common area. This Section is subject to the Architectural Reviewer's right to adopt additional or different specifications for construction or reconstruction of fences. If a fence is installed or modified in violation of this Section, **the Architectural Reviewer reserves the right to determine that the fence is unattractive or inappropriate or otherwise unsuitable for the Property, and may require the owner to modify it or to remove it.** Because the value of uniformity may not be apparent when a small number of variances are granted or a small number of violations are

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ignored, this Section controls over specific approvals and authorizations granted by the Architectural Reviewer to individual owners over time, and also controls over violations that have been tolerated for long periods of time.

3.8.1. Uniformity. Notwithstanding anything to the contrary in any instrument pertaining to the Property or elsewhere in this Declaration, even in this Section, the Architectural Review may require that all fences along a particular stretch within the Property, such as along or visible from a road or common area, be uniform in height, color, material, and appearance, including use of a particular sealant or stain. Further, the Architectural Reviewer may require certain treatments for transitions between fences and at changes in grade or elevation.

3.8.2. Fences by Declarant or Builder. As the Architectural Reviewer, Declarant may authorize variations of this Section's requirements for fences constructed by Declarant or by Builders in connection with new home construction during the Development Period. Any fence installed by Declarant is deemed to have been approved by the Architectural Reviewer.

A.9. FLAGS. Each owner and resident of Hawthorne Place has a right to fly the flag on his lot. The United States flag ("**Old Glory**") and/or the Oklahoma state flag may be displayed in a respectful manner on each lot, subject to reasonable standards adopted by the Association for the height, size, illumination, location, and number of flagpoles. All flag displays must comply with public flag laws. No other types of flags, pennants, banners, kites, or similar types of displays are permitted on a lot if the display is visible from a street or common area. Unless the Rules provide otherwise, a flag must be wall-mounted to the first floor facade of the house, and no in-ground flag pole is permitted on a lot.

A.10. GARAGES. Without the board's prior written approval, the original garage area of a lot may not be enclosed or used for any purpose that prohibits the parking of two standard-size operable vehicles therein. Garage doors are to be kept closed at all times except when the garage is actively used or when a vehicle is entering or leaving.

A.11. LANDSCAPING. No person may perform landscaping, planting, or gardening on the common area without the board's prior written authorization.

A.12. LEASING OF HOMES. An owner may lease the dwelling on his lot. Whether or not it is so stated in a lease, every lease is subject to the Community Documents. An owner is responsible for providing his tenant with copies of the Community Documents and notifying him of changes thereto. Failure by the tenant or his invitees to comply with the Community Documents, federal or state law, or local ordinance is deemed to be a default under the lease. When the Association notifies an owner of his tenant's violation, the owner will promptly obtain his tenant's compliance or exercise his rights as a landlord for tenant's breach of lease. If the tenant's violation continues or is repeated, and if the owner is unable, unwilling, or unavailable to obtain his tenant's compliance, then the Association has the power and right to pursue the remedies of a landlord under the lease or state law for the default, including eviction of the tenant. The owner of a leased lot is liable to the Association for any expenses incurred by the Association in connection with enforcement of the Community Documents against his tenant. The Association is not liable to the owner for any damages, including lost rents, suffered by the owner in relation to the Association's enforcement of the Community Documents against the owner's tenant.

A.13. LIGHTS. Exterior light sources on a lot should be unobtrusive, shielded to prevent glare, directed away from neighboring homes and yards, with little if any spillover light on neighboring property. All visible exterior light fixtures on a lot should be consistent in style and finish with the architecture of the home. The wattage of building-mounted exterior lighting may not exceed 150 watts per fixture.

A.14. NOISE & ODOR. A resident must exercise reasonable care to avoid making or permitting to be made loud, disturbing, or objectionable noises or noxious odors that are likely to disturb or annoy residents of neighboring lots. The Rules may limit, discourage, or prohibit noise-producing activities (such as garage bands) and the use of noise-producing items (such as security devices and windchimes).

A.15. OCCUPANCY. Other than the completed principal dwelling, no thing or structure on a lot may be occupied as a residence at any time by any person. This provision applies, without limitation, to the garage, mobile homes, campers, and storage sheds.

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A.16. RESIDENTIAL USE. The use of a house lot is limited exclusively to residential purposes or any other use permitted by this Declaration, including limited business uses described above.

A.17. SCREENING. The Architectural Reviewer may require an owner to screen any item on the lot that is determined by the board to be unsightly or inappropriate for a residential subdivision. Screening may be achieved with fencing, or with plant material, such as trees and bushes, or any combination of these. If plant material is used, a reasonable period of time is permitted for the plants to reach maturity as an effective screen. As used in this Section, "screened from view" refers to the view of a person in a passenger vehicle driving on a street, or the view of a person of average height standing in the middle of a yard of an adjoining lot.

A.18. SIGNS. An owner who is actively marketing his lot for sale may place in the front yard one professionally-made traditional yard sign of not more than 5 square feet advertising the lot for sale. No other sign or unsightly object may be erected, placed, or permitted to remain on the Property or to be visible from windows in the dwelling without the board's prior written approval. The board's approval may specify the location, nature, appearance, dimensions, number, and time period of a sign or object. Without liability for trespass or any other liability connected with the removal, the board may effect the immediate removal of any sign or object (1) that violates this Section, (2) which the board deems inconsistent with neighborhood standards, or (3) which the board deems an abuse of permitted sign uses. As used in this Section, "sign" includes, without limitation, lettering, images, symbols, pictures, shapes, lights, banners, and any other representation or medium that conveys a message.

A.19. TELEVISION. Each resident of the Property will avoid doing or permitting anything to be done that may unreasonably interfere with the television, radio, telephonic, electronic, microwave, cable, or satellite reception on the Property. To the extent protected by federal law, each home may have a reception-only antenna or a satellite dish that is no more than one meter in diameter or diagonal measurement. If the antenna or satellite dish is visible from the street, it must visually blend with the building and may not be more conspicuous than it needs to be to obtain an acceptable quality signal. Approval by the Architectural Reviewer is required to position an antenna or satellite dish in conspicuous manner.

A.20. TEMPORARY STRUCTURES. Except for "accessory sheds" as described above, improvements or structures of a temporary or mobile nature, such as tents, portable sheds, and mobile homes, may not be placed on a lot if visible from a street or another lot. However, an owner or owner's contractor may maintain a temporary structure (such as a portable toilet or construction trailer) on the lot during construction of the dwelling.

A.21. TRASH. Each resident will endeavor to keep the Property clean and will dispose of all refuse in receptacles designated specifically by the Association or by the city for that purpose. Trash must be placed entirely within the designated receptacle. The board may adopt, amend, and repeal rules regulating the location and visibility of trash receptacles and the disposal and removal of trash from the Property.

A.22. WINDOW TREATMENTS. All window treatments within the dwelling that are visible from the street or another dwelling must be maintained in good condition and must not detract from the appearance of the Property. The Architectural Reviewer may require an owner to change or remove a window treatment that the Architectural Reviewer determines to be inappropriate or unattractive.

A.23. YARD ART. The Association is interested in the appearance of all portions of a house lot that are visible from the street or from a neighboring lot, including yards, porches, sidewalks, window sills, and chimneys (hereafter, collectively, the "yard"). Some changes or additions to a yard may defy easy categorization as an improvement, a sign, or landscaping. This Section confirms that all aspects of a visible yard are within the purview of the Architectural Reviewer, including, without limitation, the installation of religious, cultural, or educational items; the shape of pruned shrubs; the number, shapes, and uses of flower beds; and the integration of items such as wheelbarrows, boulders, and driftwood into the landscaping. The use of any decoration, sculpture, fountain, flag, and similar items on any portion of the yard is prohibited without the prior written approval of the Architectural Reviewer unless (1) the item is expressly permitted by this Declaration, or (2) the item is placed within a fenced yard, (3) the item is no taller than the fence, and (4) the fence blocks the view of the item at ground level.

*(End of Exhibit C)*