

PRAIRIE TRACE HOMES ASSOCIATION
REVISED AND RESTATED DECLARATION AND PROTECTIVE COVENANTS

THIS REVISED AND RESTATED DECLARATION AND PROTECTIVE COVENANTS made this 1st day of January, 2017 by the Owners of the real property described herein (hereinafter referred to as “Declarants”).

WITNESSETH:

WHEREAS, Declarants are the owners of the property situated in Shawnee, County, Kansas described in Exhibit “A”, attached here to and made a part hereof (hereinafter referred to as “Prairie Trace”); and

WHEREAS, Prairie Trace is a common interest community existing under the laws of Kansas pursuant to a Declaration executed on July 26, 1984 and filed with the Shawnee County Register of Deeds in Book [REDACTED], Page [REDACTED]; and

WHEREAS, Prairie Trace is further bound by a series of Protective Covenants executed on April 25, 1986 and filed with the Shawnee County Register of Deeds in Book [REDACTED], Page [REDACTED]; and

WHEREAS, Declarants desire to update and combine the Declaration and Protective Covenants to more accurately reflect the Prairie Trace’s conditions and goals; and

WHEREAS, Declarants desire to continue Prairie Trace as a common interest, residential neighborhood possessing features of more than ordinary value in the community; and

WHEREAS, no less than sixty-seven percent (67%) of Declarants have signed an instrument agreeing to amend the Declaration and Protective Covenants, as required by those documents; and

NOW, THEREFORE, Declarants do for themselves, their grantees, successors and assigns, hereby revise and restate the Declaration and Protective Covenants, as follows:

ARTICLE I: DEFINITIONS

1.1. “Association” shall mean and refer to the Prairie Trace Homes Association, its successors and assigns.

1.2. “Board of Directors” shall mean the duly elected Board of the Association.

1.3. “Common Properties” shall mean all property including the improvements thereon, owned by the Association for the common use and enjoyment of the Owners.

1.4. “Improved Property” shall mean a single tract under a single ownership and use, and on which tract a residence has been erected or is in the process of erection, or in which any

other building not in violation of the restrictions then of record thereon is erected or is in the process of erection. Any such tract may consist of one (1) or more contiguous Lots or part or parts thereof. Any other land covered by this Declaration shall be deemed to be vacant and unimproved.

1.5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Properties.

1.6. "Member" shall be an Owner who is a Member of the Association. Per Art. 3, § 1, below, every Owner is a Member.

1.7. "Outbuilding" shall mean any covered structure, enclosed or unenclosed, not directly attached to the residence to which it is appurtenant.

1.8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to one or more Lots identified in Exhibit A, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.9. "Parks" shall mean those areas and tracts located within the Properties including those at street intersections, gateways, and entrances which may be hereinafter conveyed to and maintained by the Association for the general benefit and enjoyment for all the Owners within the Properties.

1.10. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.11. "Public Place" shall mean all streets and all similar places the use of which is dedicated to or set aside for the use of the general public.

1.12. "Street" shall mean any street, road, drive, or avenue of whatever name, as shown on the plat, provided, however that said street not be vacated.

1.13. "Unit" shall mean a single family dwelling placed upon any Lot in these Properties.

ARTICLE II: PROPERTY RIGHTS

2.1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Properties which shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Properties;

- (b) The right of the Association to suspend the voting rights and right to the use of the recreational facilities by an Owner for any period during which any assessment against said Unit remains unpaid and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations;
- (c) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by sixty-seven percent (67%) of the Members has been recorded.

2.2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Properties and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property. Such delegation of use shall be done in writing to the Board of Directors and shall be updated yearly.

ARTICLE III: MEMBERSHIP AND VOTING RIGHTS

3.1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

3.2. Owners shall be entitled to one (1) vote for each Lot owned. Where more than one (1) person holds an ownership interest in a Lot, they may collectively only cast one (1) vote, with the manner in how that vote is determined left to that collective Owner's discretion. In no event shall more than one (1) vote be cast per Lot.

3.3 The total numbers of membership shall not exceed the number of said Lots in Attachment "A".

ARTICLE IV: POWERS AND DUTIES OF THE ASSOCIATION

The Association shall provide for the care and maintenance and payment of taxes applicable to all entry ways, traffic isles, gateways, parks, and all public right-of-ways located within the plat of Properties. In addition thereto the Association shall have the following powers and duties which it may exercise and perform whenever in its discretion it may deem them necessary and desirable, to-wit:

4.1. Restrictions. To enforce either in its own name or in the name of any Owner within the Properties any or all building restrictions which may have been heretofore or may hereafter be imposed upon any of the land in such Properties, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible

in the deeds, declarations, contracts or plats in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such right of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided. Nothing herein contained shall be deemed or construed to prevent any owner having the contractual right to enforce in his own name any such restrictions.

4.2. Management. To manage and control as trustee for its members all public improvements upon and to the land and the Properties, or improvements in public places, provided that such management and control of said improvements shall at all times be subject to that had and exercised by a City, Township, County, and State, or any of them in which the land within the Properties are located.

4.3. Garbage Collection. To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public or private source.

4.4. Tree Care. To care for, spray, trim, protect and replant trees on all streets and in other public places where trees have once been planted, when such services are not available from any public source.

4.5. Vacant Lots. Care for and maintenance of vacant and/or unimproved Lots is the responsibility of the Owner. If, in the opinion of the Board of Directors (which responsibility the Board of Directors may delegate to the Architectural and Environmental Control Committee), the Owner has failed to maintain a vacant and/or unimproved lot, the Association may, in its discretion, after giving written notice and an opportunity to cure to the Owner, mow, care for, maintain and remove rubbish from vacant and/or unimproved property and do any other things necessary or desirable in the judgment of the Board of Directors (or Architectural and Environmental Control Committee as delegated) to keep the vacant and/or unimproved property and the parking in front of such vacant and/or unimproved property neat in appearance and in good order. The Cost of such maintenance shall be the responsibility of the Owner in accordance with Article VII of this Declaration.

4.6. Snow Removal. To provide for the plowing and removal of snow from streets and common properties, when such services are not available from any public source.

4.7. Maintenance of Common Properties. To provide for the maintenance of any Common Properties, including but not limited to entrances, swimming pools, and cabanas now existing or which may hereafter be erected or created in said Properties in any public street or park, or on any land other than parks set aside for the general use of the Owners in the Properties, or to which all of such Owners have access and the use thereof; and also to provide for the maintenance of any streams and natural watercourses within the Properties.

4.8. Swimming Pool. To provide for the operation and maintenance of a swimming pool, cabana, and related facilities for the exclusive use and the Members and the members of their families who reside in the Properties, and establish rules for the use and management of such facilities.

4.9. Lighting. To provide such lights as the Association may deem advisable on the streets, parks, parking areas, pedestrian ways, gateways, entrances, or other features, and in other public or semi-public places, when such facilities are not available from any public source.

4.10. Street Cleaning. To provide for the cleaning of streets, gutters, catch basins, sidewalks and pedestrian ways and for the repair and maintenance of storm sewers and appurtenant drainages facilities when such services are not available from any public source.

4.11. Street Signs. To erect and maintain signs for the marking of streets, and safety signs for the protection of children and other persons, when such signs are not available from any public source.

4.12. Police Force. To employ duly qualified peace officers for the purpose of providing such police protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.

4.13. Easements. To exercise control over such easements as it may acquire from time to time.

4.14. Acquire Property. To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes on such real estate as may be owned by it; and to pay such taxes as may be assessed against land in public or semi-public places within the Properties.

4.15. Assessments. To levy and collect the assessments which are provided for in this Declaration.

4.16. Other Associations. To join with or merge with other homeowners' associations similarly organized, operated on a similar basis, and located in Shawnee County, Kansas. Such joinder or merger shall proceed upon a vote of sixty-seven percent (67%) of the Members.

ARTICLE V: PROTECTIVE COVENANTS

5.1 Persons Bound by These Restrictions. All persons and corporations who now or shall hereafter acquire any interest in the above enumerated Lots hereby restricted shall to hold and covenant with the owner of said Lots, and with the successors and assigns, to conform and observe the following covenants, restrictions and stipulations as to the use thereof and the construction of residence and improvements thereof for a period of ten (10) years from recordation hereof, provided, however, that each of said restrictions shall be renewable and amendable in the manner hereinafter set forth. The restrictions apply to all deed holders, tenants, and anyone that resides on said Lot. Owners are responsible for ensuring their tenants, guests, visitors and other occupants comply with the Declaration and Bylaws.

5.2 Land Use and Building Types. All Lots shall be used primarily for private residential purposes. The only exception shall be the Association shall have the power to erect,

on Common Properties, a common pool and cabana, and related facilities for the use and enjoyment of all Owners, subject to the restrictions herein.

5.2 Quality and Size of Units. No dwelling shall be permitted on any Lot which is of a quality substantially less than the surrounding homes constructed and completed as of the date of recordation of these covenants. The minimum floor area of the main structure of any Unit shall be 900 square feet. Each Unit shall have attached no less than a one (1) stall garage.

5.3 Location of Units.

- (a) No building shall be located on any Lot nearer the front Lot line or nearer to the side street line than the minimum building set-back lines as provided in the recorded plats or as provided by the ordinances of the City of Topeka, Shawnee County, Kansas, as the same apply to minimum set-backs for single family residences. In case of a conflict, the ordinances of the City of Topeka, Kansas, shall govern.
- (b) No change may be made at any time that will permit the erection or maintenance of any residence on any Lot, exclusive of those projections hereinafter set forth, in violation of the ordinances of the City of Topeka, Kansas.
- (c) Reference is made herein to building lines for the purpose of determining the location of any residence with reference to the adjoining street or streets, and in case of the relocation of any said streets, changes may be made by the Declarant in any said streets, changes may be made by the Declarant in any of the said building lines. Such building lines shall in no case be established nearer to the new location of any said streets than are the building lines shown of the said plat reference to the present location of said streets. The widening of any said street shall not, for the purpose of these restrictions, deem to be a relocation of such street.
- (d) Those part of the residence that may project to the front and be nearer to the street or streets than building lines on said plat, and the distance that each may project, are as follows:
 - (i) Bay, bow or oriel, dormer or other projecting windows not exceeding one (1) story in height may project beyond the building lines not to extend three (3) feet.
 - (ii) Cornices, spoutings, chimneys, brackets, pilasters, grillwork, trellises, wing walls, and other similar projections, any projections for purely ornamental purposes, and roof overhands may project beyond the building lines not to exceed four (4) feet.

- (iii) Any vestibule not more than one story in height may project beyond the building lines not to exceed four (4) feet.

5.3 Prohibited Uses and Nuisances.

- (a) All buildings or structures on the Properties shall be of new construction. No building or structure shall be moved on said Lots. No permanent building other than a single family residence shall be constructed on any Lot, with the exception of the common pool, cabana, and related facilities. Each Unit conveyed shall be designated by a separate legal description and shall constitute a freehold estate subject to the terms, conditions and provisions hereof.
- (b) No noxious or offensive trade or activity shall be carried on upon any Lot or within any Unit nor shall anything be done thereon or therein which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit, upon any Lot or upon the exterior of any other improvements.
- (c) The maintenance, keeping, boarding or raising of animals, livestock, reptiles, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Unit, except that this shall not prohibit the keeping of dogs, cats, caged birds, or reptiles kept in a closed aquarium as domestic pets, provided they are not kept, bred or maintained for commercial purposes and, provided further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Owners. Pets shall be attended at all times and shall be registered, licensed, and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Properties unless accompanied by an adult and unless they are carried or leashed, and no pet shall be tethered on common property at anytime.
- (d) No burning of any trash, accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste or trash of any other kind shall be permitted on any Lot.
- (e) Except as herein otherwise provided, no inoperable vehicle, commercial vehicle, trailer, truck (greater than one ton classification), camper, camp truck, house trailer, boat or other machinery or equipment of any kind or character (except for such equipment or machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Unit and except for such equipment or machinery as may be required in connection with the maintenance and operation of the Common Properties

and all recreational and other common facilities) shall be kept upon the Properties nor (except for bona fide emergencies) shall the repair or maintenance of automobiles or other vehicles be carried out thereon, except in the garage of any Unit. No inoperable vehicle of any kind or any vehicle without current safety inspection or license may be kept on any Lot, yard, driveway or street in front of any Unit at any time.

- (f) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any Lot. Garbage, trash, and other refuse shall be placed in covered containers.
- (g) No Unit shall be divided or subdivided and no portion or any Unit (other than the entire Unit) shall be transferred or conveyed for any purpose. No portion of any Unit (other than the entire Unit) shall be leased. In order to protect the property values and quality of life for all Owners, renting or leasing of homes is discouraged. Homes for lease or rent will not be eligible for low-income or subsidized housing programs and should be rented at a competitive rate for the southwest Topeka housing market. Owners shall notify the Treasurer of the Association that their Unit will be leased and provide an alternative address for dues, assessments, and other notices as well as the monthly lease payment amount. Any occupants other than the Owner are expected to adhere to the Declaration, and to the Bylaws of the Association.
- (h) No satellite receivers greater than one (1) meter in diameter shall be installed or maintained upon any lot or upon the exterior of any Unit.
- (i) No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth. Fuel tanks above or below ground are hereby expressly prohibited.
- (j) The Architectural and Environment Control Committee may from time to time adopt and promulgate such rules and regulations regarding the preservation of trees and other natural resources and wildlife as it may consider appropriate.
- (k) No trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, or other buildings shall be erected, used or maintained on any Lot at any time.
- (l) No Outbuilding, attached or detached structure, pergola or detached structure for purely ornamental purposes may be erected on any part of any lot hereby restricted without prior approval of the Architectural and

Environmental Control Committee, as hereinabove provided. Outbuilding restrictions are as follows:

- (i) Only one (1) Outbuilding is allowed per Lot.
- (ii) Size of Outbuildings shall be limited to a maximum floorplan of ten by ten feet (10' x 10'), with walls of up to six feet (6') in height, and a maximum height of eight and one half feet (8½) as measured from the ground to the peak of the roof.
- (iii) Roof design shall be dual-pitched or gable with runoff not interfering with neighboring properties or established drainage. Maximum of one (1) foot overhang. Shingles on roof shall, as closely as possible, match the existing shingles on the residential residence on the Lot.
- (iv) Siding shall, as closely as possible, match the primary style, color, and material on the residential residence on the Lot.
- (v) Outbuilding shall be constructed so that all four (4) walls can be enclosed either by a structural wall or with doors that shall remain closed at all times except ingress and egress of Outbuilding. The Outbuilding must contain all items stored inside. The Outbuilding must not have items leaning against it.
- (vi) No Outbuilding shall be visible from the front of the Lot. All easements and set-backs outlined by codes and ordinances of the City of Topeka shall be followed.
- (vii) Outbuilding shall be constructed on level surface that allows for proper drainage. Cement foundations or other permanent foundations such as footer are NOT allowed or the Outbuilding would be considered a permanent structure.
- (viii) No utilities of any type shall be connected to Outbuilding.
- (ix) No Outbuildings shall be used for the occupancy or boarding of humans or any other animals. No Outbuilding shall be used for storing items that are considered explosive or dangerous to the environment. No Outbuilding shall be used to store items that attract rodents or wild animals.
- (x) All Outbuildings constructed or maintained on a Lot shall at all times be maintained in good condition and repair. If the Outbuilding is no longer in good condition or repair as deemed by the Architectural and Environmental Control Committee; it must

be either completely repaired to standard or completely removed from the Lot within sixty (60) days of notice from the Committee at the Owner's expense.

- (m) Signs are allowed for PTHA entrance signs, signs for traffic control or safety, community theme areas and such promotional signs or signs as may be maintained by the Association. All personal, security, real estate, and other signs are restricted to the current listing for the year. That list will be posted on the outside of the swimming pool.
- (n) No structure, planting or other material shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels.
- (o) No outside television or radio aerial or antenna, or other aerial or antenna or similar device for reception or transmission, shall be maintained upon any Lot, Unit or Improvement except as allowed by the Telecommunications Act of 1996.
- (p) No fence, wall, hedge or shrub which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street right-of-way lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply to any Unit within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such distances unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- (q) No vehicle shall be parked on streets or driveways so as to obstruct ingress and egress by Owners, their families, guests and invitees except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible. For a period not to exceed forty-eight (48) hours, family, guests, and invitees of Owners may park their vehicles in driveway or street appurtenant to any Unit.
- (r) No motorized vehicle may be operated at any time on any Lot hereby restricted unless the driver of such vehicle has a valid license as an operator or chauffer as such terms are defined by the laws of the State of Kansas. No licensed or unlicensed driver may operate a motorized vehicle on any vacant Lot hereby restricted without the consent, in writing, of the Architectural and Environmental Control Committee.

- (s) All Lots herein are subject to and bound by tariffs which now and may in the future be filed with the appropriate utility regulating body of the State of Kansas relating to street lighting in these properties, together with rates, rules and regulations herein provided and subject to all future amendment and changes thereto. The owner shall pay as billed a portion of the cost of public street lighting in the Properties according to prevailing rates from time to time, rules and regulations, and future amendments and changes on file with the appropriate governmental utility regulating agency of the State of Kansas.
- (t) The covenants exist to protect and increase property values. They are not a punishment nor are they designed to take away property rights; they protect the values of homes and the majority of Owners from nuisance and objectionable items.

5.4 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as set forth in the recorded plat. Within these easements no structures, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.

ARTICLE VI: COVENANT FOR MAINTENANCE ASSESSMENTS

6.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner (by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance) hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association or its nominee: (1) annual assessments or charges, and (2) special assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof, including reasonable attorney's fees, if allowed by law, as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

6.2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used for the following current operating expenses, reserves, and purposes:

- (a) Promotion of the recreation, health, safety and welfare of those persons residing within the Properties;

- (b) Routine repair, maintenance, care and operation of the Common Properties and all recreational and other common facilities situated upon the Common Properties, including, but not limited to, the cost of painting the exterior of any improvements on the Common Properties and the repair and replacement of any paved areas on the Common Properties;
- (c) Operation of the services and facilities devoted to, intended for, and related to the implementation of the enjoyment and use of the Common Properties and all recreational and other common facilities situated upon the Properties by residents of the Properties;
- (d) Any management, legal or accounting expenses incurred by the Association;
- (e) Ad valorem and other taxes and insurance premiums on the Common Properties owned by the Association;
- (f) Establishments of a maintenance and reserve fund as hereinafter more fully described.
- (g) The payment of such other charges and expenses as may be elsewhere required or authorized by this Declaration or that the Board of Directors may, from time to time, determine necessary or desirable to meet the purposes of the Association as stated in its Articles of Incorporation.

6.3. Basis of Annual Assessments; Limitations Thereon Except for Insurance. Annual assessments or charges shall remain constant from January 1 through December 31 of each year and be subject to the following limitations thereon:

- (a) The maximum annual assessment may be increased each year not more than the Consumer Price Index, from the previous July, as published by the Department of Labor, Washington, D.C., above the maximum assessment for the previous year, plus the amount by which ad valorem real estate taxes, utility charges, and casualty and other insurance premiums payable by the Association have increased over amounts payable for the same or similar items for the previous year, without a vote of the membership.
- (b) The maximum annual assessment may be increased above the amount provided in Paragraph (a) by a vote of fifty-one percent (51%) of all the Members who are present and voting in person or by proxy, at a meeting called for this purpose by no less than ten (10) nor more than sixty (60) days notice in writing to each Member stating the time, purpose, and place of said meeting.

- (c) After consideration and determination of current routine repair, maintenance, care and operational costs and other needs of the Association, the Board of Directors shall levy the annual assessments for each Unit at an amount not in excess of the maximum allowable by this Section 5.3.

6.4. Special Assessments. In addition to the annual assessments or charges for the purposes described in Section 5.2 of this article and subject to approval by the affirmative vote of fifty-one percent (51%) of all the Members who are present and voting in person or by proxy, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, and estimated repairs or replacements of any capital improvements, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate. No such special assessment, however, shall be authorized without a meeting of the Members called for this purpose, by no less than ten (10) nor more than sixty (60) days notice in writing to each Member stating the time, purpose, and place of said meeting. Any such special assessment shall be due and payable at the time and in the manner approved by fifty-one percent (51%) of all Members who are present and voting in person or by proxy at said meeting.

6.5. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate of all Units, and shall be collected on a monthly basis; i.e., one-twelfth (1/12) of the total assessment on each Unit each month; provided, however, the Board of Directors, upon resolution, may levy and collect assessments on a quarterly, semi-annual, or annual basis. Except as otherwise provided with respect to the funding of the reserves for replacement hereinafter set forth in Section 5.15 of the Article, both annual and special assessments shall be due and payable to the Association or its nominee, if such nominee is a federally insured bank in Kansas with truck powers, on the first day of each month in equal monthly installments unless otherwise provided as aforesaid.

6.6. Date of Commencement of Annual Assessments: Due Dates. The annual assessment for each Member shall commence on the date a deed for the Unit to which such membership appurtenant is delivered to the Member. The first monthly installment of each such annual assessment shall be made for the balance of the month during which a deed for the Unit is delivered to the Member and shall become due and payable and a lien on the date a deed for the Unit is delivered to said Member. Except as hereinabove provided, the monthly installments of each such annual assessment for any Unit owned by a Member for any month after the first month shall become due and payable to the Association or its nominee, if such nominee is a Kansas bank with trust powers, and a lien on the first day of each successive month. Any Member may prepay one or more installment on any annual assessment or special assessment levied by the Association, without premium or penalty.

6.7. Duties of the Board of Directors with Respect to Assessments.

- (a) The Board of Directors shall fix the date of commencement and the amount and the time when due of each installment of the assessment

against each Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at the time, prepare a roster of the Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. The omission of the Board of Directors, before the expiration of any annual assessment period, to fix the amount of the annual assessment hereunder for that or the next period, shall not be deemed a waiver of modification in any respect of the provisions of this Article, or a release of any Member from the obligation to pay the annual assessment, or any installment thereof, for that or any subsequent annual assessment period, but the annual assessment fixed for the preceding period shall continue until a new annual assessment is fixed.

- (b) Written notice of the assessment shall thereupon be sent out to the Members subject thereto.
- (c) The Association shall upon demand at any time furnish to any Owner liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same) a certificate in writing signed by an officer of the Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. A reasonable charge may be made by the Board of Directors, in advance, for the issuance of any such certificate. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid.
- (d) The Association shall enforce the payment of assessments in accordance with the provisions of Section 5.8.

6.8. Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of Association; Maintenance and Enforcement of the Lien by the Declarant; Notice to Mortgagee; Appointment of Agent for Service of Process.

- (a) If any assessment or any part thereof is not paid on the date when due, as herein provided, then the unpaid amount of such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, including reasonable attorney's fees, if permitted by law, as hereinafter provided, thereupon become a continuing lien on the Unit or Units of the non-paying Owner which shall bind such Unit or Units in the hands of the then Owner, his heirs, executors, devisees, personal representatives, and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by the same. No Member may waive, have waived or otherwise escape liability for the assessments provided herein by non-use of the Common Properties or abandonment of his Unit.

- (b) If any assessment or part thereof is not paid within ten (10) days after the due date, the unpaid amount of such assessment may, upon resolution of the Board of Directors, bear interest from the due date at the highest rate allowed by law per annum and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the Board may fix, and the Association may bring an action at law against the Member personally obligated to pay the same in order to enforce payment for foreclosure on the lien against the Unit or Units then belonging to said Member in the same manner now or hereafter provided for the foreclosure of mortgages, deeds of trust, or other liens on real property in the State of Kansas, containing a power of sale, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, and in either of which events there shall be added to the amount of such assessment the costs of preparing and filing the complaints in such action and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorney's fee, if permitted by law, to be fixed by the court, together with the costs of the action, all of which shall not be less than twenty percent (20%) of the sum claimed. Suit for a money judgment for unpaid assessments shall be maintainable by the Association without foreclosing or waiving the lien securing same. The lien against any Unit shall continue for a period of one (1) year from the date of delinquency and no longer unless suit shall have been filed. In the event suit is filed within one (1) year from the date of delinquency, the lien shall continue until the final adjudication of the suit, including appeals, if any, and until sale of the Unit under the execution of the judgment rendered.
- (c) The Association shall, by its own action or upon request of the holder of the first mortgage on any Unit or Units, notify the said holder of the first mortgage on any Unit or Units for which any assessment levied pursuant to this Declaration becomes delinquent for a period of thirty (30) days or more, and in any other case where the Owner of such Unit or Units is in default with respect to the performance of any other obligation hereunder for a period of thirty (30) days or more, but any failure to give, or to request, such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in this Article. The Association shall take no action or foreclose the lien herein provided as security for the payment of assessments, except after notice in writing to the holder of any first mortgage on the unit or Units involved.
- (d) Upon default in the payment of any one or more monthly installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be

accelerated at the option of the Board of Directors and be declared due and payable in full.

- (e) The Board of Directors may post a list of Members who are delinquent in the payment of any assessment or other fees, which may be due the Association, including any installment thereof which becomes delinquent, in any prominent location within the Properties.
- (f) In the event of dissolution of the Association, or if the Association fails or refuses to adequately maintain the appearance and condition of the Common Properties and all recreational and other common facilities situated upon Common Properties, which it is obligated to maintain under the provisions hereof, the Declarant shall have the right but not the responsibility to assume the duty of performing all such maintenance and obligations of the Association (i) at any time after such dissolution on giving written notice to the Owners, or (ii) at any time after the expiration of ten (10) days after receipt by the Association of written notice from the City of Topeka, Kansas, setting forth in detail the nature and extent of such failure unless such failure shall have been remedied within said ten (10) day period. Pursuant to this end, the Declarant may collect the annual assessments as set by the Board of Directors from time to time in the manner hereinabove provided and the special assessments, if any levied by the Association as provided for in Section 5.4 of this Article when the same shall become due and, if necessary, enforce the payment of delinquent assessments in the manner set forth in this Declaration. The power and authority herein granted to the Declarant shall cease to exist at such time as the Association shall deliver to the Declarant substantial evidence of its willingness and ability to resume maintenance of the Common Properties and of all recreational and other common facilities situated upon the Common Properties.
- (g) Any unit owner not residing in Shawnee County, Kansas, agrees to appoint in writing and delivered to the Board, a resident agent having a Shawnee County, Kansas address to receive service of process for the enforcement of any of the terms of this Declaration.

6.9. Priority of Lien. The liens established by this Declaration shall have preference over any other assessments, liens, judgments, or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on the Unit.
- (b) The lien of the assessments or charges, regular and special provided herein, shall be subordinate and inferior to the lien of any first mortgage or deed of trust now or hereafter placed upon any Unit; provided, however, that such subordination shall apply only to the assessment of charge which

becomes due and payable prior to the sale, whether public or private, of such Unit, pursuant to a decree of foreclosure of any such mortgage or pursuant to the terms and conditions of any such deed of trust or a deed in lieu of foreclosure. Said sale or deed in lieu of foreclosure shall not relieve such Unit from liability for the amount of any assessments or charges thereafter becoming due, nor from the lien of any such subsequent assessment or charge. Any holder of a first mortgage or deed of trust who comes into possession of any Unit pursuant to the remedies provided in the first mortgage or deed of trust or who acquires title of any Unit pursuant to foreclosure or deed (or assignment) in lieu of foreclosure, shall take title free of any claims for unpaid assessments or charges against the Unit which accrued prior to the date said holder comes into possession or title is acquired by said holder of the mortgage or deed of trust except for claims for a pro rata share of such unpaid assessments or charges resulting from a pro rata reallocation of such unpaid assessments or charges to all Units, including the Unit so possessed or acquired by the holder of the mortgage or deed of trust.

- (c) No amendment to this Section shall affect the rights of the holder of any such mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.
- (d) The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (or the indebtedness secured thereby) not otherwise entitled thereto as herein provided.

6.10. Additional Default. Any recorded first mortgage secured on a Unit shall provide that any default by the Member in the payment of any assessment levied pursuant to this Declaration, or any installment thereof, shall likewise be a default in such mortgage (or the indebtedness secured thereby) but failure to include such a provision in any such mortgage shall not affect the validity or priority thereof and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 6.9 of this Article shall not be altered, modified, or diminished by reason of such failure.

6.11. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge, and lien created herein: (a) all properties dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article I hereof; (c) all areas, if any, reserved by the Declarant of the recorded plat of the Properties; provided, however, that no land or improvements devoted to dwelling use shall be exempt from the assessments herein provided; (d) all model homes maintained by Declarant for sales purposes.

6.12. Reserves for Replacement. The Association shall, at all times, include in the annual assessments levied pursuant to Article V hereof adequate sums for the establishment and

maintenance of a reserve fund for replacements of the Common Properties, painting the exterior of any improvements on the Common Properties, and replacement of any paved areas on the Common Properties.

6.13. Expenditures Limited To Assessments For Current Year. The Association shall at no time expend more money within any one (1) year than the total amount of the assessments for that particular year, or any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatsoever, binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities; it being the intention that the assessment for each year shall be applied as far as practicable toward payment of the obligations of that year, and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for utilities.

ARTICLE VII: ARCHITECTURAL CONTROL

No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change of alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors, or by an Architectural and Environmental Control Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specification have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII: EXTERIOR MAINTENANCE

In the event an Owner of a Lot fails to maintain the premises and improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by sixty-seven percent (67%) of the Board of Directors, shall have the right, through its agents and employees, to enter upon said parcel and repair, maintain and restore the Lot and the exterior of the Unit and any other improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which the Unit is subject.

ARTICLE IX: ADDITION OF OTHER LAND

The Owners may from time to time add to the Properties such land as is now or hereafter owned or approved for addition by said Owners by a vote of sixty-seven percent (67%) of Owners, provided that the land so added to the Properties shall at the time be bound by all of the terms of this Declaration and any future modifications thereof.

ARTICLE X: GENERAL PROVISIONS

10.1. Enforcement. The Association , or any Owner, shall have the right to enforce, by any proceeding at law or in equity, the Restrictions and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any Restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

10.3. Term. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of ten (10) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

10.4. Amendment. This Declaration and Protective Covenants may be amended by an instrument or instruments collectively signed by not less than fifty-one percent (51%) of Owners. Any amendment must be recorded.

10.5. Association To Notify Members of Address. The Association shall notify all owners of land in the Properties as it may exists from time to time, insofar as the addresses of such owners are listed with said Association, of the official address of said Association, the place and time of the regular meetings of the Association, and the place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address, the Association shall notify all other owners of the land in the Properties insofar as their addresses are listed with the Association, of the new address.

10.6 Supersedes Prior Declaration and Protective Covenants. This Revised and Restated Declaration and Protective Covenants is intended to revise and restate the existing Declaration and Protective Covenants, as described above. To the extent any provision of this Revised and Restated Declaration and Protective Covenants conflicts with the earlier document, this document controls. To the extent any or all of this Revised and Restated Declaration and Protective Covenants is found to be invalid or ineffective, those provisions of the original Declaration and Protective Covenants not superseded by this Revised Declaration and Protective Covenants will remain in effect.

IN WITNESS WHEREOF, Prairie Trace Homes Association on behalf of the Owners within Prairie Trace Homes Association, a Kansas common interest residential community, states that no less than sixty-seven percent (67%) of such Owners have signed an instrument agreeing that the previous Declaration and Protective Covenants referenced above should be restated and revised as herein provided, and authorizing the Association to file this Revised Declaration and Protective Covenants.

PRAIRIE TRACE HOMES ASSOCIATION,

By:

[INSERT NAME], President

Date

ATTESTED TO BY:

[INSERT NAME], Vice-President

[INSERT NAME], Secretary

Bob Oberle, Treasurer

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss
COUNTY OF SHAWNEE)

BE IT REMEMBERED, that on the ____ day of _____, 2017, before me personally appeared _____ to me personally known, who being by me duly sworn did say that he is the _____ of Prairie Trace Homes Association, and that said instrument was signed on behalf of such corporation by authority of its Board of Directors acting on behalf of the Owners living in Prairie Trace Homes Association, and who executed the above instrument and acknowledged the same to be his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year last above written.

Notary Public

My Appointment Expires: _____