

**DECLARATION OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF SUNRISE ADDITION**

Teresa Dawson-D

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made this 7<sup>th</sup> day of December, 2012, by Sunrise Land Development, LLC (hereinafter referred to as "Developer"), a Kansas limited liability company, for itself and its successors, grantees and assigns.

WITNESSETH:

WHEREAS, Developer is the owner of the following described real property, to-wit:

Lots 1 through 49 inclusive, Block A;

Lots 1 through 21 inclusive, Block B;

Lots 1 through 23 inclusive, Block C;

Lots 1 through 25 inclusive, Block D;

Lots 1 through 38 inclusive, Block E;

Lots 1 through 34 inclusive, Block F; and

Lots 1 through 17 inclusive, Block G.

All within,

SUNRISE ADDITION  
An Addition to Rose Hill,  
Butler County, Kansas,

such real property being hereinafter referred to as the "Property"; and

WHEREAS, Developer deems it desirable to impose a general plan and common theme for the improvement and development of the Property and to adopt and establish covenants, conditions and restrictions upon the Property and each and every Lot and portion thereof, and upon the use, occupancy and enjoyment of the Property, and for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property; and

WHEREAS, The Sunrise Homeowners' Association, Inc., a non-profit association formed hereby, will be incorporated under the laws of the State of Kansas for the purpose of exercising the powers and functions set forth herein.



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NOW, THEREFORE, Developer hereby subjects the Property to the covenants, conditions, restrictions, assessments and limitations set forth and contained in this Declaration, hereby declaring that this Declaration shall constitute covenants running with the land, binding Developer, its successors, grantees and assigns, and all subsequent owners of all or any part of the Property, together with their respective grantees, heirs, executors, administrators, devisees, mortgagees, successors or assigns who by acceptance of a deed to a Lot or Lots, ratify and affirm that the covenants, conditions, restrictions, assessments and limitations set forth and contained in this Declaration encumber such Lot or Lots.

## ARTICLE I DEFINITION OF TERMS

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follow:

1.01. "Annual Assessment" shall mean an annual general fund assessment which may be levied initially by Developer, thereafter by the Association, through its Board of Directors, from year to year on each Lot within the Property owned by a Class A Member for the purpose of providing a general fund to enable the Association to exercise the powers and render the services herein provided.

1.02. "Association" shall mean and refer to SUNRISE HOMEOWNERS' ASSOCIATION, a non-profit association, to be incorporated under the laws of the State of Kansas, its successors and assigns.

1.03. "Architectural Control Committee" shall mean the Members that are either initially appointed by Developer or duly elected by the Association, to exercise those duties consistent with the architectural control function set forth in Article XII.

1.04. "Board of Directors" or "Board" shall mean and refer to the individuals that are either initially appointed by Developer or duly elected under the Bylaws of the Association, to exercise all corporate powers by or under the authority of, and administer the business and affairs of the Association.

1.05. "Building Site" shall mean any Lot, Lot and contiguous fractional Lot or two or more contiguous Lots owned by a common Owner. All such contiguous Lots and contiguous fractional Lots owned by a common Owner shall be considered one Building Site.

1.06. "Common Area" shall mean any portion of the Property and all Improvements located thereon designated by Developer or the Association for the common use and enjoyment of the Owners, specifically including all areas designated as Reserve areas on the recorded plat for the Property or any plat recorded in connection with any land added to the Property by Developer in the manner hereinafter provided.

1.07. "Developer" shall mean and refer to Sunrise Land Development, LLC, its successors and assigns.

1.08. "Declaration" shall mean this instrument and all attachments and amendments thereto.

1.09. "Improvement" shall mean and refer to any alteration, thing or device the placement of which upon any Lot or Building Site may affect the appearance of such Lot including, by way of illustration and not limitation, any building, garage, porch, shed, greenhouse, bathhouse, covered or uncovered patio, outdoor kitchen, awning, swimming pool, tennis court, basketball court and/or basketball goal, clothes line, radio or television antenna, satellite dish, pergola, trellis, fence, curbing, paving, wall, hedge, shrubbery, trees, signboard, or any temporary or permanent alteration of any Lot. The term "Improvement" shall also mean any mound, bank, excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot, and any change in the grade of any Lot from that existing at the time of purchase of the Lot by each Owner.

1.10. "Lakeside Lots" shall mean Lots 1 through 24 inclusive, Block F of Sunrise Addition, an Addition to Rose Hill, Butler County, Kansas.

1.11. "Lot" shall mean and refer to each Lot as platted on the plat of Sunrise Addition, an Addition to Rose Hill, Butler County, Kansas.

1.12. "Member" shall mean and refer to every person or entity that is the Owner of all or any portion of a Lot, provided, however, when more than one person or entity holds such interest in any Lot, all such persons in aggregate shall be deemed a single Member.

1.13. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or Lots, including contract sellers, but excluding persons or entities having an interest merely as security for the performance of an obligation.

1.14. "Property" shall mean and refer to SUNRISE ADDITION, an Addition to Rose Hill, Butler County, Kansas, as well as any property added to the Property in the manner hereinafter provided.

1.15. "Single-Family Residential Dwelling" shall mean an Improvement erected and maintained in conformance with this Declaration for private residential purposes and designed for occupancy by a single family. It shall not mean or refer to any apartment, flat, duplex or other multi-family dwelling even though intended for residential purposes.

1.16. "Wall Easement" shall mean an easement shown on the recorded plat of the Property, reserved for Developer and the Association, their successors, grantees

and assigns for the purpose of placing, erecting and maintaining a wall in an area beginning on the southern boundary and extending five (5) feet north, running east to west continuously on each Wall Easement Lot.

1.17. "Wall Easement Lot" shall mean Lots 1, 2 and 3 of Block A; Lots 1 and 21 of Block B; and Lots 1 through 8 inclusive, Block D of Sunrise Addition, an Addition to Rose Hill, Butler County, Kansas, which shall be encumbered by the Wall Easement.

## **ARTICLE II MEMBERSHIP IN THE ASSOCIATION**

2.01. The Owners of all the Property together with the Owners of any other property that may from time to time be added to the Property in the manner hereinafter provided, shall be Members of the Association.

2.02. The Association will be incorporated under the laws of the State of Kansas as a corporation not for profit at a time within the sole discretion of Developer.

2.03. Membership in the Association shall be limited to the Developer or Owners of Property within the boundaries of the Property as it exists from time to time, as hereinafter set forth.

## **ARTICLE III DEVELOPER ACTING AS AND FOR ASSOCIATION**

3.01. Developer shall, in its sole and absolute discretion, assume the rights and obligations of the Association; levy and collect the Assessments; and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such rights and obligations were hereby given directly to the Developer until relinquished or assigned as set forth in Sections 3.02 and 3.03 below.

3.02. The Association shall not assume any of the rights herein provided without the consent of the Developer and its relinquishment in writing of all or any portion of such rights or as otherwise provided in this Declaration.

3.03. The Developer may, by appropriate written instrument made expressly for that purpose, assign or convey to a third party or the Association any portion or all of the rights, and obligations reserved by it in this Article III and upon such assignment or conveyance being made, such third party or the Association shall exercise and assume such rights and obligations.

## **ARTICLE IV VOTING RIGHTS**

4.01. The Association shall have two (2) classes of voting membership, as follows:

Class A. Each Owner of a Lot in the Property (other than a Class B Member) shall be in a Class A Member of the Association and shall be entitled to one vote for each Lot owned by it in fee simple title; provided, however, that until a Single-Family Residential Dwelling is completed and occupied in good faith on a Lot, the Developer shall be entitled to the vote of the Owner, and purchase of a Lot subject to this Declaration shall constitute the purchaser's proxy to Developer for the aforesaid purpose. When more than one person or entity holds such interest in any Lot, all such persons or entities in aggregate shall be deemed a single Member, with a single vote and the vote for such Lot shall be exercised as they among themselves determine such that in no event shall more than one vote be cast with respect to any one Lot.

Class B. Developer shall be a Class B Member and shall have twenty (20) votes for each Lot owned by it. In addition, the Developer shall have the right to appoint a majority of the Board of Directors and Developer shall have the right to approve and the power to veto any and all actions of the Association until Developer relinquishes its rights in writing or as otherwise provided in this Declaration. Class B membership of the Developer shall continue until Developer, or its assigns, owns no land within the Property (including land added as set forth below) or until Developer relinquishes its Class B membership in writing, whichever first occurs.

4.02. The Association shall be the sole judge of the qualification of its Members and their rights to participate in its meetings and proceedings in accordance with this Declaration. Members may cast their vote in person or by proxy at any regular or special meeting of the Association. The voting rights of a Class A Member regarding Assessments shall be suspended for any period during which any prior levied Assessment described in this Declaration, including interest and fees, remains unpaid by that Class A Member. Unless the context clearly indicates to the contrary, decisions by the Association described herein shall require approval of the requisite percentage of Class A and Class B votes combined and not separate requisite percentages of each Class.

4.03. Notwithstanding the foregoing, the provisions of this Article IV shall be subject and subordinate to the provisions of Article III herein.

## **ARTICLE V LAND ENTITLED TO BENEFITS**

5.01. No Lot shall be entitled to any of the benefits, improvements, or services provided by the Association unless the Owner thereof shall have subjected such Lot to the terms of this Declaration and to the Assessments herein provided for.

5.02. For purposes hereof, accepting title to a Lot within the Property after the recording of this Declaration shall satisfy the foregoing requirements.

## **ARTICLE VI USE OF COMMON AREAS**

6.01. The Common Areas are hereby conveyed to and shall be owned by the Association. The Owners of Lots within the Property shall have the exclusive right of the use of all Common Areas within the Property as it from time to time exists.

6.02. The Association shall have the right and the power to charge reasonable fees for the use of any recreational facility located within a Common Area and to make reasonable rules and regulations which shall govern the use of the Common Areas and implement the terms of this Declaration as the context requires.

## ARTICLE VII USE, OCCUPANCY AND CONDUCT RESTRICTIONS

7.01. Purpose. These covenants, conditions, restrictions, reservations and easements herein declared are designed to: insure the most appropriate development and improvement of the Property and each Lot therein in harmony with a common development scheme; to protect the Owners of Lots against uses tending to depreciate or lower the value of the Property or any Lot thereon; prevent the erection or maintenance of unattractive, poorly designed or poorly proportioned Improvements within the Property; insure that all Improvements are constructed with proper and suitable materials; encourage and insure the construction of attractive Single-Family Residential Dwellings; maintain proper building setback from streets and adequate free spaces between Improvements; and generally provide a high quality single-family residential development on the Property.

7.02. Use of the Property; Compliance with Plat. No Improvement shall be erected, altered, placed or permitted to remain on any Building Site other than a Single-Family Residential Dwelling designed for private use and occupancy by a single family, along with a private garage and other Improvements incidental to single-family residential use. No portion of the Property shall be used for other than single-family residential use except as Common Areas or sales and development activities by Developer and its successors, assigns, agents, employees, representatives and contractors. Improvements shall comply with the minimum front, back and side setback requirements and all other requirements shown on the recorded plat of the Property, or as otherwise specified by Developer or the Architectural Control Committee and shall comply with all applicable laws, codes, ordinances, rules or regulations.

7.03. Minimum Size of Dwellings. Each Single-Family Residential Dwelling constructed upon a Building Site shall conform to the minimum square footage requirements, as are determined from time to time by Developer or the Architectural Control Committee. Minimum square footage requirements shall be exclusive of garages, open porches, eaves, steps, and basements, except as otherwise approved by Developer or the Architectural Control Committee.

7.04. Garage. Each Single-Family Residential Dwelling constructed upon a Building Site shall include an attached garage suitable for two or more automobiles.

7.05. Lot Division and Building Sites. An Owner may own a fraction of one Lot only if said fractional Lot is contiguous to one or more full Lots. No Lot shall be divided into more than one Building Site, but two or more contiguous full Lots or at least one full Lot along with a contiguous fractional Lot may be used as one Building Site for one Single-Family Residential Dwelling. No Lot shall be split, divided, subdivided for sale, resale, gift, transfer or otherwise, except by Developer or with Developer's prior written approval.

7.06. Landscaping. Upon completion of a Single-Family Residential Dwelling on a Building Site, or as soon as practicable and appropriate thereafter but no later than one hundred and eighty (180) days after completion, the Owner shall plant a lawn on the entire Building Site and plant at least two (2) trees with a minimum caliper of two (2) inches at the time of planting and at least four (4) perennial shrubs on the Building Site, provided, however, no shrub, mass planting or tree shall obstruct site lines at any corner of the Building Site. Trees, shrubs and other plantings that die shall be promptly removed and replaced by Owner to maintain the required minimums set forth above. No live tree shall be removed from any Lot unless approved by Developer or the Architectural Control Committee.

7.07. Maintenance. Owner shall keep and maintain its Building Site in good order and repair including the painting, sealing, staining (or other appropriate external care) of all Improvements and the planting, watering and mowing of all lawns, the pruning and maintenance of all trees, shrubbery and plantings on Owner's Building Site and any contiguous portion of public easements and rights-of-way abutting Owner's Building Site, all in a manner and with such frequency as is consistent with good property management in relation to the high quality residential neighborhood to be developed on the Property, provided Developer shall only be required to mow its respective Lots as it deems necessary. Common Areas, public easements and rights-of-way shall be landscaped with grass and trees only unless an alternative landscape design and materials are specifically approved by Developer or the Architectural Control Committee.

7.08. Excavations. No excavations, except such as are necessary for the construction of a Single-Family Residential Dwelling or Improvements, shall be permitted on any Lot without the prior written consent of Developer or the Architectural Control Committee.

7.09. Prohibited Improvements and Uses. No trailer, trailer house, mobile home, modular home, used home, secondhand home or previously constructed building or outbuilding may be moved, placed, parked or used, upon the Property nor permitted to remain upon the Property other than as used by Developer or otherwise approved by it for temporary use during the development of the Property. No garage, tent, shack, temporary structure, outbuilding or other Improvement, except a Single-Family Residential Dwelling, may be used at any time for human habitation nor converted into apartments, rental or living quarters. No external antennas, satellite receivers exceeding 30 inches in diameter, permanent clothes lines, poles, towers or wires shall be erected

or maintained on the Property. All utility, telephone and communication lines shall be underground.

7.10. Trash; Storage. No trash, ashes, dirt, rock, landscape trimmings or other refuse may be dumped or maintained on any Lot or Building Site within the Property. All trash containers must be stored out of sight except on days when trash pick up is scheduled. No building material shall be stored and no machinery shall be placed or operated upon, any Lot, except such building material and machinery as is contemporaneously necessary for the construction or maintenance of a Single-Family Residential Dwelling or Improvements on the Property in accordance with this Declaration.

7.11. Common Area & Reserve Dumping. No trash, ashes, dirt, rock, landscape trimmings, animal waste or other refuse may be dumped or left on any Common Area or Reserve.

7.12. Animals. No livestock, fowl, or any other animal except the usual and ordinary number of family pets may be kept or maintained on the Property and no commercial or agricultural business enterprises, including breeding, involving the use of animals, birds, reptiles, amphibians, fish or insects may be conducted on the Property.

7.13. Signs. No sign, advertisement, billboard or other advertising device of any nature may be erected, placed or maintained on any Lot within the Property without prior written consent of Developer or the Architectural Control Committee; provided, however, Developer or its representatives, agents, employees and contractors may erect signs advertising Lots and Single-Family Residential Dwellings in the Property for sale and promotion of the Property during the development thereof.

7.14. Home Professions and Businesses. No retail, wholesale, manufacturing, service or repair business shall be conducted or permitted on any Lot or in any Single-Family Residential Dwelling, or Improvement erected thereon except any Lot, Building Site or Single-Family Residential Dwelling owned by Developer or others so authorized by them may be used for a model home or for a real estate sales office.

7.15. Contractors. All Single-Family Residential Dwellings and Improvements constructed upon a Lot or Building Site shall be constructed by a contractor licensed by the City of Wichita, Sedgwick County, and expressly approved in writing by Developer or the Architectural Control Committee prior to or at the time of approval of plans therefore by Developer or the Architectural Control Committee.

7.16. Vehicles. No automobile, truck, motorcycle, boat, trailer of any type, camper, recreational vehicle, personal watercraft, aircraft or any other vehicle of any type or description may be stored or permanently, continually or regularly parked for more than forty-eight (48) continuous hours nor shall such items continue a consistent, cumulative presence on any Common Area, public easement, right-of-way or in the open on any Lot or driveway; provided, however, boats (other than pontoon boats which are specifically excluded) personal watercraft and motorcycles may be continually or



regularly parked in the rear yard of a Building Site in an area enclosed by a fence constructed, placed and maintained in the accordance with this Declaration that conceals such items from the view of all other Building Sites. Vehicle repairs other than ordinary light maintenance are not permitted on the Property.

7.17. Pipes. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except temporary placement of garden hoses used for irrigation purposes. No portion of the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, nor shall any other Improvement or activity relating thereto be permitted or allowed to remain in or on any portion of the Property.

7.18. Fencing. No fencing shall be erected on any Building Site without the prior written consent of Developer or the Architectural Control Committee. No chain link or wire fence shall be permitted on the Property other than as specifically set forth in Section 7.18.01 below. All fences erected or maintained on the Property shall be constructed, placed and maintained in accordance with this Declaration, including any rules, regulations or requirements established from time to time by the Architectural Control Committee, and along the entire length shall: except posts be at least two (2) inches above ground level to provide for adequate drainage; and other than wrought iron fences, be no less than six (6) feet nor more than six and one-half (6-1/2) feet in height above ground level.

7.18.01. Fencing-Dog Runs. Chain link or wire fence may be permitted specifically for a dog run, kennel or like facility provided such structures are in the rear yard of the Building Site in an area enclosed by a fence that conceals such structures from the view of all other Building Sites, constructed, placed and maintained in the accordance with this Declaration.

7.18.02. Fencing-Lakeside Lots. Notwithstanding any other provision herein to the contrary, only wrought iron fencing, black in color, no less than five (5) feet nor more than six and one-half (6-1/2) feet in height above ground level shall be allowed on any Lakeside Lot. Any dog run, kennel or like facility on a Lakeside Lot shall be constructed of only wrought iron fencing, black in color.

7.19. Roof Construction. Roofs shall be constructed with composition shingles, weathered wood or similar in color or an alternative material which is comparable in appearance and flame resistance.

7.20. Storage Buildings. All storage buildings shall be constructed of a siding and roofing material similar in composition and quality to the siding and roofing material used on the Single-Family Residential Dwelling on the Lot where such storage building is constructed. No plastic, metal, or concrete block storage buildings shall be erected or placed on any Lot and in no event shall any storage building be constructed without the prior written consent of Developer or the Architectural Control Committee.

7.21. Use of Lakes. No motorized craft of any type shall be used or maintained on the lakes within the Property. Use of the lakes shall otherwise be controlled by rules and regulations adopted from time to time and at any time by Developer or the Board of Directors of the Association.

7.22. Exterior Color Schemes. Initial exterior color schemes and all changes to existing color schemes shall be approved in advance by the Developer and/or the Architectural Control Committee. Pre-approved exterior colors and color schemes may be established from time to time and at any time by Developer and upon relinquishment or assignment to the Association as set forth in Sections 3.02 and 3.03 above. All changes to exterior colors and color schemes must be authorized and approved by Developer or the Architectural Control Committee in accordance with the terms and provisions of Article XII.

7.23. Holiday Decorations. Holiday decorations shall not be installed more than thirty (30) days prior to the holiday that is the subject of such decorations and shall be removed no later than the earlier of thirty (30) days subsequent to such holiday or the next traditionally recognized holiday.

7.24. Nuisances; Noxious or Dangerous and Offensive Activities Prohibited. Each Owner and occupant shall obey and comply with all applicable laws, ordinances, rules and regulations now in effect or hereafter enacted and all terms, provisions, rules and regulations now or hereafter established by this Declaration. No Owner or occupant shall do or allow to be done any act which causes or threatens to cause any damage or encroachment to the Single-Family Residential Dwelling, Improvements or Lots of any other Owner or the Association. No noxious, dangerous or offensive activity or thing shall be carried on or permitted on the Property, nor shall anything be done which may be or may become an annoyance or nuisance to any other Owner within the Property.

7.25. Restrictions Not Exclusive. The covenants, conditions and restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by applicable zoning laws, or the laws, rules or restrictions imposed by any deed or the recorded plat of the Property. In the event of any conflict, the most restrictive provision of any such law, rule, regulation, deed, plat or this Declaration shall be taken to govern and control.

## ARTICLE VIII MAINTENANCE OF WALL EASEMENT

8.01. Applicability. This Article VIII shall apply to and be binding upon all Wall Easement Lots. The placing and erection of any Improvement within the Wall Easement shall be at the sole discretion of Developer or the Association upon relinquishment or assignment as set forth in Sections 3.02 and 3.03 above.

8.02. Additional Covenants and Conditions. The following additional covenants, conditions and restrictions are hereby imposed on the Owners of Wall Easement Lots and their successors, assigns, grantees, heirs and personal representatives:

8.02.01. Developer and the Association are hereby granted authority to place, erect and maintain a privacy wall or other decorative wall structure within the Wall Easement, in their sole discretion;

8.02.02. The Owner of a Wall Easement Lot shall not alter nor allow any Improvement or alteration within the Wall Easement other than as placed, erected or maintained by Developer or the Association and any other Improvement or alteration located within the Wall Easement shall be subject to removal, damage, or destruction without any recourse to the Owner thereof in damages or otherwise; and

8.02.03. The Owner of a Wall Easement Lot shall mow the grass and maintain the landscaping within the Wall Easement on such Owner's Wall Easement Lot and the Association shall maintain all Improvements located within the Wall Easement on each Wall Easement Lot. The Owner of each Wall Easement Lot hereby grants the Association an easement to enter onto each Wall Easement Lot for the purpose of repair or maintenance of such Improvements.

## ARTICLE IX THE ASSOCIATION

### 9.01. Powers and Duties.

9.01.01. The Association shall have the rights and powers as set forth herein and in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit association or corporation, and the Association, through its Board of Directors, shall have the right to perform each and every duty required of it by this Declaration.

9.01.02. The Association shall own, and through its Board of Directors, maintain, improve, landscape, mow and keep clean the Common Areas.

9.01.03. The Association may maintain such insurance on the Common Areas and all Improvements thereon as the Board of Directors may in its reasonable discretion determine.

9.01.04. The Association, through its Board of Directors, shall have the right to create and establish reserves for the repair, restoration, or replacement of any Improvement it has the duty to repair, restore or replace hereunder.

9.01.05. The Association, through its Board of Directors, shall have the right to adopt such rules and regulations as it may deem advisable for the maintenance, use, conservation, and beautification of the Property and for the health, comfort, safety and general welfare of the Owner and occupants of Lots in the Property.

9.01.06. An Architectural Control Committee shall be created to assume the duties and authority of the architectural control function set forth in Article XII with at least three (3) and no more than five (5) members, initially appointed by Developer, thereafter duly elected by an affirmative vote of a majority of the Class A

Members present in person or by proxy at a meeting of the Class A Members specially called for that purpose.

9.02. Operations and Expenses. The Association, through its Board of Directors, shall establish such committees as it deems appropriate or advisable, and may engage a manager, secretaries, engineers, auditors, accountants, legal counsel, and other employees or consultants as may be reasonably necessary for the discharge of its duties hereunder. The expenses of committees, the salaries of a manager and other employees and the fees of consultants shall be established by the Board of Directors and paid by the Association. The Association shall pay all other expenses approved by the Board of Directors, necessary or incidental to the conduct of its business.

9.03. Enforcement. The Association, through its Board of Directors, shall have the authority to enforce each and every provision of this Declaration, including the authority to commence and maintain an action to enjoin any breach or threatened breach of any of the provisions hereof, and to pay all costs of any such action or other enforcement procedure.

9.04. Developer's Rights. The terms and provisions of this Article shall be subject and subordinate to the rights of Developer as set forth in Article III of this Declaration.

## ARTICLE X METHOD OF PROVIDING GENERAL AND SPECIAL FUNDS

10.01. Each Lot owned by a Class A Member shall be subject to an Annual Assessment which may be levied by the Association, through its Board of Directors, from year to year, to be paid by the Member to the Association annually or at such other times as the Association may determine in advance. Anything to the contrary herein notwithstanding, the Developer, in its sole discretion, shall determine the amount of Annual Assessment for the Association, for so long as Developer owns a Lot within the Property (including additions to the Property). Thereafter, the Association, through its Board of Directors, shall from year to year determine the total amount required in its general fund and may levy and collect the Annual Assessment for each Lot owned by a Class A Member. Annual Assessments shall commence upon acceptance of title to a Lot by its Owner, determined by date of closing and prorated on a 365-day annual basis.

10.02. Annual Assessments upon each Lot may be increased by the Association;

10.01.01. by an amount not exceeding fifty percent (50%) of the preceding year's Annual Assessment by an affirmative vote of a majority of the Board of Directors; or

10.01.02. by an amount in excess of fifty percent (50%) of the preceding year's Annual Assessment, but not exceeding one hundred percent (100%)

of the preceding year's Annual Assessment, by an affirmative vote of seventy-five percent (75%) of the Class A Members present in person or by proxy at a meeting of the Class A Members specially called for that purpose.

10.03. The Association, through its Board of Directors, may levy and collect special assessments for capital improvements or repairs in such amounts as the Association, through its Board of Directors, deems reasonably necessary.

10.04. Unless an increase in the Annual Assessment provided for in paragraph 10.02 of this Article X is specifically limited, it shall continue to be effective until rescinded by the Association by an affirmative vote of seventy-five percent (75%) of the Class A Members present in person or by proxy at a meeting specifically called for such purpose, or by action taken under the terms of paragraph 10.05 of this Article X and in either such event the rescission shall be effective commencing on the first day of the next succeeding year.

10.05. Whenever the Association may deem it advisable to submit to the members a proposal under paragraph 10.02 of this Article X for increasing or decreasing the amount of the Annual Assessments, it shall notify the Class A Members of the Association of such meeting, giving the time and place at which it is to be held and the fact that an increase or decrease in the amount of the Annual Assessment is to be voted upon at such meeting. Such notice must be deposited in the United States mail not less than fifteen (15) days prior to the date of such meeting.

10.06. The first Annual Assessment shall be for the calendar year 2013, and shall be due and payable thirty (30) days after levy. Subsequent Annual Assessments shall be due and payable on January 1st of each year thereafter unless otherwise determined by the Association, through its Board of Directors. Failure of the Association to levy the Annual Assessment prior to January 1st of each year for the next succeeding year shall not invalidate any assessment subsequently made for that particular year; nor shall failure to levy an Annual Assessment for any one year affect the right of the Association to do so for any subsequent year. Prior to the first Annual Assessment hereinabove provided for, Developer shall have the right to make a partial assessment within the limits herein provided, enforceable as *in rem* and/or *in personam* proceedings in any court in Butler County, Kansas. The Association, through its Board of Directors, may elect to permit collections in monthly, quarterly or semi-annual payments in lieu of the annual payments provided for herein.

10.07. The Owner of each Lot subject to an Annual Assessment, partial assessment or special assessment as herein provided, by acceptance of a deed to such Lot, hereby agrees to pay to the Association all assessments placed against such Lot in accordance herewith and the Association is hereby granted the power to proceed against such Owner personally for the collection of said assessments, said right to be in addition to and not in lieu of, all other rights and remedies of the Association herein granted.

10.08. The Association may levy and collect an initiation fee in an amount not greater than one-half (1/2) of the then current Annual Assessment from the purchaser of each Lot. Such initiation fee shall not be considered a "transfer fee" for the purposes of Section 58-3821 of the Kansas Statutes and shall be specifically excluded from the application of that statute per subsection 58-3821(a)(2)(G) therein.

## ARTICLE XI LIEN ON REAL ESTATE

11.01. The assessments provided for herein shall become a lien on the respective Lots as soon as they become due and payable as above set forth provided, however, that such liens shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said Lots. In the event of the failure of any Owner to pay assessments within thirty (30) days from the date same are levied, then such assessments, from the thirtieth (30<sup>th</sup>) day after levy shall bear interest at ten percent (10%), compounded annually.

11.02. Thirty (30) days from the date of levying an assessment on a Lot, if unpaid, the assessment shall become delinquent and the Association, through its Board of Directors, may in its discretion file certificates of nonpayment of assessment against a Lot in the office of the Register of Deeds of Butler County, Kansas. For each certificate so filed the Association shall be entitled to collect from the Owner of the Lot the amount of the delinquent assessment, recording fees, collection, filing and attorney fees and interest. Such amounts recorded in the certificate of nonpayment shall be a lien upon the Lot, enforceable as *in rem* and/or *in personam* proceedings in any court in Butler County, Kansas, having jurisdiction of suits for the enforcement of such liens, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on the Lot.

11.03. Such liens shall continue for a period from the date of delinquency through the maximum time allowed by law, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and the sale of the Lot under execution of the judgment establishing same.

## ARTICLE XII ARCHITECTURAL CONTROL

12.01. Architectural Control Function. In order to assure the development and continued maintenance and operation of the Property as a first-class residential neighborhood, no Improvement shall be commenced, erected, placed, maintained, moved onto or permitted to remain on any Lot, nor shall any existing Improvement upon any Lot be changed or altered in any manner, nor shall any new use be commenced on any Lot, unless plans and specifications (including a site plan, a grade plan and a drainage plan) therefore shall have been submitted to and approved in writing by Developer, whom shall have complete control of all such matters and may approve or withhold approval on any basis deemed proper in its sole and absolute discretion.

Developer shall have the absolute right at any time and from time to time to delegate such architectural control function to any other person or entity. Once Developer has relinquished its interest in the Property, the Architectural Control Committee shall assume these duties, provided, in no event shall the Architectural Control Committee have the power or authority to waive, amend, or grant a variance to, any of the easements, setbacks, covenants, conditions or restrictions set forth in this Declaration.

12.02. Required Information. Plans and specifications submitted for approval to Developer shall be in such form and shall contain such information as may be required by Developer in its sole discretion. Such plans and specifications submitted for approval to the Architectural Control Committee shall contain such information as may be required in its reasonable discretion.

12.03. No Liability, Reliance on Decisions. Neither Developer, nor any successor, assign, agent, employee, representative or other person or entity to whom such architectural control function has been delegated nor the Association or Architectural Control Committee, shall be liable to any Owner or other person or other entity for any claims, damages or causes of action arising from or in any way out of performance or nonperformance of the architectural control function including, by way of illustration and not limitation, the failure, refusal or neglect to approve any plans and specification submitted. Any architectural control decision shall be final and conclusive but only to the unique facts and circumstances presented to the Architectural Control Committee upon submission of plans and specifications for approval. No decision of the Architectural Control Committee may be relied upon as precedent or approval, explicit or implied, of any other Improvement, whether or not such Improvement is similar to or in conformance with an Improvement approved by Developer or the Architectural Control Committee and any commencement, erection, placement or maintenance of an Improvement in reliance upon a previously approved or existing Improvement within the Property without written approval of Developer or the Architectural Control Committee shall be at the Owner's own risk.

12.04. Noncompliance. If any Improvement shall be altered, erected, placed or maintained upon any Lot, or any use or new use commenced or maintained on any Lot, without approval of the Architectural Control Committee or otherwise than in accordance with the plans and specification approved pursuant to the provisions of this Article, such alteration, erection, maintenance, use or new use shall be deemed to have been undertaken in violation of this Declaration and without the approval required herein, and upon written notice, any such Improvements so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use or new use shall be terminated so as to extinguish such violation. In the event the Owner of the Lot upon which such violation(s) exist(s) shall not have taken reasonable steps toward the removal or termination of the same within ten (10) days after the notice of such violation(s), Developer, the Association, through its Board of Directors, or any other Owner shall have the right to take such steps as may be necessary to extinguish such violation including but not limited to enforcement of this Declaration by court order for the removal or termination of the such violation(s), and costs, in proceedings in any court in Butler County, Kansas, having jurisdiction of such suits and collection of all

costs to extinguish such violation including but not limited to filing, attorneys fees and interest.

### ARTICLE XIII ENFORCEMENT

13.01. Right to Enforce. Developer, the Association, through its Board of Directors, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions and restrictions now or hereafter imposed by the provisions of this Declaration.

13.02. Waiver. Failure by Developer, the Association, or any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

13.03. Attorneys' Fees and Costs. Developer, the Association, or any Owner shall have the right to include in such claim for relief a reasonable sum for attorney's fees and all other expenses reasonably incurred in enforcing the rights, terms, provisions, covenants, conditions and restrictions hereunder.

13.04. Notice of non-compliance and hearing. Developer shall, in its sole discretion, have the right to determine compliance with this Declaration for so long as Developer, its successors or assigns own at least one (1) Lot within the Property. Once Developer, its successors or assigns have relinquished their interest in the Property to the Association, or otherwise delegated enforcement rights to the Association, the Board of Directors of the Association shall have the authority to determine compliance with this Declaration. Upon receipt of an allegation of a Lot's non-compliance with Article VII, Use Occupancy & Conduct Restrictions, (excluding Sections 7.10, 7.13, 7.16 and 7.23) or Article XII, Architectural Control, the Board shall review the allegation and determine if action is necessary. If the Board determines that action is necessary, the Owner of the Lot shall be notified in writing of the allegation and the Owner shall have ten (10) days to request and receive a hearing with the Board to dispute the allegation. If the Owner fails to respond to the notification, or after a hearing, the Board determines the Owner's dispute of the allegation is without merit, the Board shall notify the Owner in writing of the Boards' determination of the Lot's non-compliance with this Declaration. If the allegation of non-compliance is under Sections 7.10, 7.13, 7.16 or 7.23, no hearing shall be available, it being in the Board's sole discretion to determine non-compliance based on the Board's independent review, and the Board shall notify the Owner in writing if the Board determines the Lot is not in compliance with this Declaration. Owner shall have ten (10) days from the date of the notice of non-compliance to bring the Lot into compliance, determination of compliance to be in the Board's sole discretion.

13.05. In the event the Lot is not in compliance with this Declaration within ten (10) days of the notice of non-compliance, the Owner shall pay the Association an amount equal to \$50 multiplied by the number of days of non-compliance from the date of the notice of non-compliance, not to exceed \$500 per month of non-compliance, not as a penalty but as liquidated damages for breach of this Declaration. Such amount



due shall become a lien on the Lot as soon as it is due and payable; provided, however, such lien shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on the Lot. In the event of Owner's failure to pay the amount due within thirty (30) days from the date levied, then such amount due, from the thirtieth (30<sup>th</sup>) day after levy, shall bear interest at ten percent (10%), compounded annually. The liquidated damages provisions of this Section shall be in addition to, not in lieu of, the rights of Developer, the Association or any Owner under Articles IX and XII of this Declaration.

#### **ARTICLE XIV RIGHTS, POWERS & LIMITATION OF LIABILITY OF DEVELOPER**

14.01. Assignment and Delegation. Developer shall have all rights and powers granted to the Association or to the Architectural Control Committee for so long as Developer, its successors or assigns own at least one (1) Lot within the Property, and shall have the absolute right and power to assign and/or delegate, at any time and from time to time, all or any part of any of the rights, powers and authority contained in this Declaration.

14.02. Addition of Other Land. Developer, at its discretion, shall have the right from time to time to add land to the Property including but not limited to, the right to plat additional property, provided that:

14.02.01. Developer owns a Lot or Lots within the Property;

14.02.02. The property so added to the Property shall at the time of addition be subject to and bound by all of the terms of this Declaration and any amendments thereto; and

14.02.03. Developer executes and records a document with the office of the Register of Deeds of Butler County, Kansas, describing the property added and subjecting the same to the terms of this Declaration.

14.03. Removal of Land. Developer shall have the absolute right at any time and from time to time to waive or modify any or all of the covenants, conditions and restrictions of this Declaration as to any undeveloped and unimproved Lot or Lots owned by Developer by executing and filing a document of record with the office of the Register of Deeds of Butler County, Kansas describing such waiver or modification and describing the Lot or Lots to which such waiver or modification applies.

14.04. Development Activities. Developer specifically reserves the right to carry on Developer's business in the Property so long as Developer owns land within the Property or new Single-Family Residential Dwellings or Improvements are being constructed in the Property, including by way of illustration and not limitation, maintaining sales offices, model homes, business offices and other facilities necessary or convenient for the business of Developer.

14.05. Easements in Favor of Developer. Developer specifically reserves to itself, its successors and assigns, a perpetual, nonexclusive easement and right-of-way over the Common Areas for the purposes of constructing, maintaining, repairing, replacing and rebuilding pipes, drains, mains and/or utilities for the purpose of conveying gas, water and sewage through the Property, together with the right to excavate and level ditches and/or trenches for the location of such pipes, drains, mains and utilities.

**14.06. LIMITATION OF LIABILITY: COMMON AREAS, PUBLIC EASEMENTS AND RIGHTS-OF-WAY SHALL BE CONVEYED HEREUNDER "AS-IS" AND DEVELOPER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, VALUE, HABITABILITY, FREEDOM FROM HAZARDS, ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. DEVELOPER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES ARISING BY LAW, CONTRACT, CIVIL LIABILITY, TORT OR OTHERWISE UNDER ANY CIRCUMSTANCES FOR, OR ARISING OUT OF THE PROPERTY, ANY DEFECT, INADEQUACY OR LACK OR LOSS OF USE OF THE PROPERTY.**

#### **ARTICLE XV COVENANTS RUNNING WITH THE LAND**

15.01. The covenants, conditions and restrictions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon and run with the Property and shall be binding upon all Owners of any part or portion thereof, along with all successors, assigns, grantees or purchasers of any part or portion of the Property, including under any deed, grant, escrow, contract of sale, device, or lease.

#### **ARTICLE XVI AMENDMENT**

16.01. Amendment by Developer. Until such time as Developer owns no Lot within the Property, Developer shall have the absolute right to amend this Declaration by recording a written Amendment in the office of the Register of Deeds of Butler County, Kansas; provided, however, that such Amendment shall not materially affect any rights of the then existing mortgage holders.

16.02. Other Amendment. After Developer owns no Lot within the Property, this Declaration may be amended only upon the affirmative vote of seventy-five percent (75%) of the Class A Members of the Association, in person or by proxy at a meeting called for such purpose, evidenced by an Amendment to this Declaration duly executed and acknowledged by the Board of Directors of the Association and recorded in the office of the Register of Deeds of Butler County, Kansas; provided, however, that Developer retains the right to amend this Declaration, in its sole discretion as it may relate to any land added to the Property pursuant to the provisions hereof.

## ARTICLE XVII MISCELLANEOUS

17.01. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Developer, the Association, or the Owner of any Lot and their respective legal representatives, heirs, successors, assigns and grantees, for a term of thirty-five (35) years from the date of recording hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of a majority of the Lots by number according to the recorded plat and any amendments thereto, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions in whole or in part.

17.02. Severability. All of the covenants, conditions and restrictions contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such covenants, conditions or restrictions, or any part thereof, is invalid or for any reason becomes unenforceable, no other covenant, condition or restriction or any part thereof, shall be affected or impaired.

17.03. Construction and Interpretation. In constructing, interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of a general plan and common theme for the improvement and development of the Property and the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants, or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any Lot or Building Site or upon the construction of Improvements, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then in that case the provisions of this Declaration shall control.

17.04. Notice. A written or printed notice, deposited in the United States Post Office, with postage prepaid thereon, and addressed to the Owner(s) at the last address listed with the Association, shall be deemed to be sufficient and proper notice for any purpose of this Declaration where notices are required, unless otherwise provided herein.

17.05. Waiver and Exceptions. The failure by Developer, the Association, or of any Owner to enforce any of the covenants, conditions, restrictions or reservations to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other covenant, condition, restriction or reservation.

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

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

Sunrise Land Development, LLC

By: *Paul Kelsey*  
Paul Kelsey, as its Managing Member

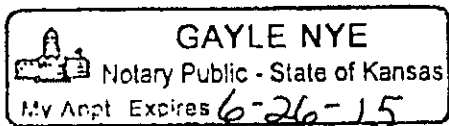
STATE OF KANSAS        )  
                                  ) ss:  
SEDGEWICK COUNTY    )

BE IT REMEMBERED that on this 7<sup>th</sup> day of December 2012 before me the undersigned, a Notary Public in and for the County and state aforesaid, came Paul Kelsey, on behalf of Sunrise Land Development, LLC as its Managing Member who is personally known to me to be the same person who executed the within instrument of writing, and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Wichita, Kansas, on the day, month and year first above written.

*Gayle Nye*  
Notary Public

My Appointment Expires: 6-26-15



RTN: Judy Terhune  
ENV: Baughman Company, PA  
(2) 315 Ellis  
Wichita, KS 67211

BUTLER COUNTY, KS  
- MARCIA MCCOY -  
REGISTER OF DEEDS  
Book: 2009 Page: 4165  
Receipt #: 48865 Total Fees: \$16.00  
Pages Recorded: 3  
Date Recorded: 7/21/2008 1:17:32 PM

**RESTRICTIVE COVENANT**



THIS DECLARATION made this 19<sup>th</sup> day of May, 2008, by Sunrise Land Development, LLC, a Kansas Limited Liability Company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

**SUNRISE ADDITION**

Lots 1 through 49, Block A  
Lots 1 through 21, Block B  
Lots 1 through 23, Block C  
Lots 1 through 25, Block D  
Lots 1 through 38, Block E  
Lots 1 through 34, Block F  
Lots 1 through 17, Block G

WHEREAS, the Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserve "A", Sunrise Addition, Rose Hill, Butler County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for open space, landscaping, lakes, berms, playground and related facilities, parking lot, drainage purposes, sidewalks, and utilities as confined to easements.

Reserve "B" is hereby reserved for open space, entry monuments, landscaping, streets, drainage purposes, and utilities.

Reserves "A" and "B" shall be owned and maintained by the homeowners association for the addition.

2. That a Homeowner's Association shall be formed and incorporated as a non-profit corporation under Kansas Statutes by June 1, 2009 at the Declarant's sole cost. Reserves "A" and "B", as designated on the plat of Sunrise Addition, Rose Hill, Butler County, Kansas shall be deeded to the Homeowner's Association upon its incorporation or within 30 days thereafter.

3. That the declaration of covenants and other provisions of the Homeowner's Association being formed shall provide specific pertinent language requiring that the Homeowner's Association shall include the first or any other subsequent phase or phases for the maintenance of any and all common areas contiguous to Reserves "A" and "B", Sunrise Addition, Rose Hill, Butler County, Kansas, under the same scope of responsibility as the initial phase of development.

REC 11  
COMP 11  
NUM 11

Restrictive Covenant  
Page 2 of 3

4. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the common areas, as defined, for the purposes of maintaining such common areas. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Homeowner's Association as may be appropriate, has failed to maintain the common areas in a reasonable and prudent manner.

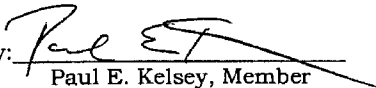
and,

B. That the appropriate governing body has given written notice to the Declarant or the Homeowner's and neither entity has responded in initiating corrective action within 30 days of such notice. If the governing body has taken action to maintain the common areas under this covenant, the Declarant or Homeowner's Association shall pay promptly the costs expanded. If the costs are not paid within 30 days of the rendering of an account, the costs shall be considered an assessment against all of the lots in Sunrise Addition, Rose Hill, Butler County, Kansas, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in title to all Lots, as platted in Sunrise Addition, Rose Hill, Butler County, Kansas.

EXECUTED the day and year first written.

Sunrise Land Development, LLC

By:   
Paul E. Kelsey, Member



Restrictive Covenant  
Page 3 of 3

STATE OF KANSAS            )  
COUNTY OF BUTLER        )  SS:

BE IT REMEMBERED, that on this 19<sup>th</sup> day of May, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Paul E. Kelsey, as Member of Sunrise Land Development, LLC, a Kansas Limited Liability Company, personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

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

Judith M. Terhune  
Notary Public

(My Appointment Expires: 11-7-09)

