

BAHHOA Covenants

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS APPLICABLE TO A PART OF KAPPELMAN'S BELAIRE HEIGHTS—AN ADDITION TO SEDGWICK COUNTY, KANSAS

THIS DECLARATION, made on the date hereinafter set forth by CHESTER-KAPPELMAN-GAUDREAU, INC., hereinafter called "Declarant."

WITNESSTH:

WHEREAS, Declarant desires to subject to the terms of this Declaration the following real estate which Declarant now owns, to-wit: All lots, blocks, reserves and floodways as shown on the recorded plat of Kappelman's Bel Aire Heights, and Addition to Sedgwick County, Kansas EXCEPT Lot I, Block 9, and Reserve B, of said Addition as shown on the recorded plat thereof;

WHEREAS, there is included within said real estate certain Common areas, as that term is hereinafter defined, which are to be available for the common use and enjoyment of owners and residents of residential properties included within the real estate above described;

WHEREAS, it is necessary and desirable to establish binding covenants, conditions and restrictions applicable to the real estate above described to insure the proper maintenance and administration of said Common Areas and the real estate being subjected to this Declaration;

WHEREAS, it is the purpose and intention of this Declaration that the real estate first above described shall be held and/or conveyed subject to the covenants, conditions and restrictions contained in this Declaration; and

WHEREAS, there will be established the Kappelman's Bel Aire Heights Homeowners Association, Inc., (hereinafter referred to as the "Association") consisting of the owners of single family residential and multi-family residential lots included within the real estate first above described;

NOW, THEREFORE, Declarant hereby declares that all of the first above described real estate shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with said real estate and be binding on all parties having any right, title or interest therein, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The real estate first above described, which is subject to the following easements, restrictions, covenants and conditions, is herein after call the "Properties."

ARTICLE I

DEFINITIONS

Unless the context clearly indicates a different meaning there for, the following words, phrases, or terms as hereinafter used in this Declaration (regardless of the tense or person in which the same be used) shall be deemed to mean and shall be defined as hereinafter set forth in this Article I.

SECTION 1 The term Declaration as used herein shall mean this Declaration of Covenants, Conditions, and Restriction of Kappelman's Bel Aire Heights, an Addition to Sedgwick Co, Kansas.

SECTION 2 Association shall mean Kappelman's Bel Aire Heights Homeowners Association, Inc., a Kansas nonprofit corporation.

SECTION 3 Articles of Incorporation and Bylaws shall mean

Articles of Incorporation or Bylaws, as the case may be, of the Association and as the same may be amended from time to time.

SECTION 4 Owner shall mean the record owner or owners of a fee or undivided fee interest in any lot; provided, however, when an owner has committed to sell a lot or an undivided interest therein and when and for so long as the purchaser is entitled to possession of the lot, either exclusively or with others, as a result thereof, then such purchaser shall be deemed the owner of such lot or undivided interest therein for all purposes hereunder, but only after the seller of the lot or undivided interest therein and the purchaser shall have delivered a document signed by them, to the Secretary of the Association evidencing such purchaser's rights of purchase and possession. Owner shall not include those persons or entities having an interest merely as security for the performance of an obligation during such time as an executory contract pertaining thereto is in force. Each owner as herein defined is hereinafter referred to as Owner.

SECTION 5 (a) Member shall mean every person who or entity which is an Owner.

(b) Member in good standing shall mean a member not in violation at any given time of the terms, conditions and requirement of this Declaration.

SECTION 6 "Common Areas" shall mean all of Reserve A and the Floodway through Block 7, as shown on the recorded plat of said Kappelman's Bel Aire Heights, an Addition to Sedgwick County Kansas.

SECTION 7 Community facilities shall mean all facilities placed or erected on the Common Areas for the common use and benefit of all members of the Association, including drives, walks, parking areas, sewers, electrical, water, gas, television, and telephone services and fixtures, storage and equipment areas or enclosures, parks, open spaces, planted and landscaped areas, sprinkling systems and recreational areas, located within said Common Areas.

SECTION 8 (a) The word "Lot" as used herein, shall mean a lot as set forth and designated in the recorded plat of Kappelman's Bel Aire Heights, an Addition to Sedgwick County, Kansas, hereinafter called the "addition," and any additional land which may be subjected to this Declaration pursuant to Article XI hereof. In the event any Lot is split, divided or subdivided so also subject it to separate individual ownership for either single or multifamily residential purposes, each separate part thereof so split, divided or subdivided be deemed a "lot" for all purposes hereunder except for computing voting rights, in which event the original lot as platted, and prior to being split, divided or subdivided, shall govern voting rights. Where two or more Lots are combined into a single home site, said home site shall be deemed to be one "lot" for all purposes hereunder.

(b) Single family residential lot shall mean any one of all lots in the Addition, except Lots 53 through 59, both inclusive, in Block 5, and Lots 11 through 19, both inclusive, in Block 8, of the Addition.

(c) multifamily residential lot shall mean any one of the following lots in the Addition, to-wit: Lots 53 through 59, both inclusive, in Block 5, and Lots 11 through 19, both inclusive, in Block 8, of the Addition.

SECTION 9 Notice, declaration, certification, approval, consent, authorization shall man and be effective as such only when in writing.

SECTION 10 A transfer shall mean a conveyance of any and every kind or nature whatsoever of any right, title or interest in subject property or in a residence site or any part or portion thereof or interest therein or improvement thereon or appurtenant thereto, including a transfer by deed of trust or mortgage and also including, but not limited to, a sale, assignment, gift, lease or sublease.

SECTION 11 Declarant shall mean CHESTER-KAPPELMAN

GAUDREAU, INC. and any of its successors or assigns to whom Declarant's interest, rights and duties herein may hereafter by specifically assigned in writing and such assignment filed of record in the office of the Register of Deeds of Sedgwick Co., Kansas.

SECTION 12 Utilities shall mean electricity, gas, water, telephone, television, trash pickup and like services whether or not provided or supplied by a public utility company or an improvement district.

ARTICLE II

MEMBERSHIP AND VOTING RIGHTS

SECTION 1 The Association will be organized as a nonprofit corporation for a perpetual term under the laws of the State of Kansas.

SECTION 2 Membership in the Association shall be mandatory and automatic for each owner of a Lot located within the "Properties," whether or not said Lot is to be used for single or multifamily residential purposes, as those terms are defined above.

SECTION 3 The Association shall have two classes of voting membership. No member may vote unless he is a member in good standing.

CLASS A members shall be all Owners as defined above of single family residential Lots. Class A Members shall be entitled to two (2) votes for each Lot as now platted, subject to the exceptions set forth in Article I, Section 8, above, in which they hold the interest required for membership. When more than one person holds any such interest in any Lot, the two votes for such Lot shall be exercised as such owners may determine between or among themselves, and such votes may not be increased by splitting, dividing or subdividing such Lot (regardless of whether such Lot is split, divided or subdivided) in the future. In the event a single family residential Lot is split, divided or subdivided, the two votes shall be exercised as the owners of the split, divided or subdivided Lot may determine between or among themselves. Notwithstanding the foregoing, Declarant shall be entitled to ten (10) votes for each single family residential Lot of which it is the Owner to be cast as it may determine.

CLASS B Member shall be all Owners as defined above of

multifamily residential Lots. Class B members shall be entitled to one (1) vote for each Lot as now platted, subject to the exceptions set forth in Article I, Section 8, above, in which they hold the interest required for membership. The one vote for each Lot in which more than one person has such interest as required for membership shall be exercised as such persons may determine between or among themselves, and such vote may not be increased by splitting, dividing or subdividing such Lot (regardless of whether such Lot is split, divided or subdivided) in the future.

In the event a multifamily residential lot is split, divided or subdivided, then the vote shall be exercised as the Owners of the split, divided or subdivided Lot may determine between or among themselves. Notwithstanding any of the foregoing provisions of this Declaration, Declarant shall be entitled to ten (10) votes for each multifamily, residential lot of which it is the owner, whether in whole or in part, to be cast as it may determine, and any owner or a part of a multifamily residential lot of which Declarant is also an owner, shall have no vote.

ARTICLE III

PROPERTY RIGHTS

SECTION 1 The Declarant hereby dedicates and conveys to each Class A and Class B Member, or their lessees, a right and easement of enjoyment in and to the Common Areas described above, and Declarant covenants for itself, its successors and assigns, that it will convey covenants for itself, its successors and assigns, that it will convey a fee simple title in the Commons Areas to the Association when Declarant, in its sole discretion, deems it appropriate to do so, subject to easements, covenants and other restrictions then of record and any non-delinquent taxes applicable to said property, whether general, special or otherwise; and further subject to the right of the public generally in said Common Area for flood control, drainage, floodway, and public utility purposes as specifically set forth in the recorded plat of the Addition. Prior to such conveyance, the Declarant shall be responsible for proper maintenance of the Common Area and for payment of taxes attributable thereto, including special assessment taxes, when and as they become due, and Insurance; provided, however the Association shall advance sufficient assessment monies to Declarant from time to time, as requested by Declarant, to pay the cost and expenses of the foregoing. After such conveyance, the Association shall be responsible for proper maintenance of the Common Areas and for payment of taxes attributable thereto, including special assessment taxes when and as they become due, and Insurance, and the Association will hold Declarant harmless therefrom. Whenever an obligation, duty or right is hereinafter stated as being that of the "Declarant or the Association," Whether in this Article III or subsequent Articles hereof, the entity actually possessing such obligation, duty or right at any given time shall be that entity, i.e., the Declarant or the Association, in which title to the Common Areas is then vested unless otherwise stated.

SECTION 2 Rights of the Sedgwick County Public Works Department— In the event Declarant or the Association shall fail at any time to maintain the Common Areas or fail in any manner to fulfill their obligations relating to the Common Areas, the Sedgwick County Public Works Department, or such other public body as may then have jurisdiction over the Common Areas, may serve a written Notice of Delinquency upon the Association setting forth the manner in which Declarant or the Association have failed to fulfill their obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which Declarant or the Association may fulfill the obligation. If said obligation is not fulfilled within the time specified, the Sedgwick County Public Works Department, or such other public body having jurisdiction over the Common Areas, in order to preserve the taxable values of the Properties and to prevent the Common Areas from becoming a nuisance, may enter upon said Common Areas and perform the obligations listed in the Notice of Deficiency. All costs incurred by the Sedgwick County Public works Department, or other public body having jurisdiction, in carrying out the obligations of Declarant or the Association may be assessed against the Common Areas as provided by law, subject to Declarant's right of appeal as by law provided.

SECTION 3 The title to the Common Areas when vested in the Association shall also be subject to the rights and easement of enjoyment in and to such Common Area by its members as set forth in Section 1 of this Article III above. Said rights and easements shall not be personal, but shall be considered to be appurtenant to said Lots whether or not specifically set forth in deeds to the Lots.

SECTION 4 Declarant or the Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the Common Areas, which regulations shall be binding upon the members of the Association and all residents of the development of the public generally

SECTION 5 Subject to the rights set forth in Section 1 of this Article III, the Common Areas may be used for recreation or other uses for the benefit of the Members of the Association as determined by Declarant or the Association. Recreational facilities may be constructed in the Common Areas by the Association or Declarant, if done in conformance with the applicable rules, and regulations and resolutions of Sedgwick County. All members of the association and guests accompanying said members shall have equal access to the Common Areas and all community facilities located thereon, subject to rules and regulation established by the Declarant or the Association, including the right to place limitations on the number of guests and the right to limit or exclude members and their guests if such members owning the property in which they reside are in default in the payment of assessments or In the performance of any other obligation required by this Declaration.

SECTION 6 Notwithstanding any other provision of this Declaration, Declarant reserves the right to grant easements within the Common Areas for the installation, repair and maintenance of water mains, sewers, drainage courses, and other utilities, provided that such installations shall be effected in such manner as to minimize damage to the natural features of the Common Areas, and in such manner as not to interfere with the rights of the public as granted in the recorded plat of the Addition. The Declarant or the Association shall have the right to mortgage any part, parts or all of the Common Areas in connection with the borrowing of money in the furtherance of any of its purposes authorized herein, and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings thereunder. The Declarant or the Association shall have the right to suspend the rights of any member in connection with the Common Areas for any period not to exceed thirty (30) days for any infraction of its published rules and regulations.

ARTICLE IV
ASSESSMENTS

SECTION 1 All of the Lots located within and comprising the Properties shall be subject to an annual assessment charge to be paid by the respective Owners thereof, to the Association annually and in advance prior to the 1st day of January, in each year, commencing with January 1 of the year following occupancy of the first residential structure located in the Properties. In addition to the annual assessment, each first Owner of a Lot, not, however, including Declarant, shall pay an original charge of \$100 to the Association.

SECTION 2 Each year the Board of Directors of the Association shall, prior to November 1, determine the total amount of money needed by the Association for the next succeeding year. The Amount so determined shall be divided by the total number of votes attributable to the Class A and Class B Members collectively, including the members who at the time may not be in good standing. The result of such division shall be known as the "assessment unit." The annual assessment applicable to the Owner of each Lot shall be computed by multiplying the "assessment unit" by the number of votes attributable to such Owner by virtue of his ownership of such Lot, even if such Owner is not a member in good standing at such time, provided, however, and regardless of the provisions of Article II Section 3 hereof, Declarant, for the purpose of computing its annual assessments hereunder, shall be treated as having two (2) votes for each single family residential Lot and one (1) vote for each multifamily residential Lot owned by it. Should the Board of Directors of the Association at any time determine in its sole discretion that the assessments levied are or may prove to be insufficient, or in the event of emergencies, the Board of Directors shall have the authority to levy additional assessments as it shall deem necessary against the Owners of all Lots, excluding Declarant.

SECTION 3 The assessment fund shall be for such of the following purposes as the Association shall determine necessary and advisable: for improving and maintaining the Common Areas and other property of the Association; for planting trees and shrubbery and the care thereof on the Common Areas; for expenses incidental to the proper operations and maintenance of recreational facilities located within the Common Areas; for collecting and disposing of garbage, ashes and rubbish from the Common Areas; for employing night watchmen; for caring for vacant property, whether or not located in the Common Areas; for removing grass or weeds; for constructing, purchasing, maintaining or operating any community service; for purchase of insurance; emergencies; or for doing any other thing necessary or advisable in the operation of the Association for the general welfare of the Members; for expenses incidental to the examination of building plans and the enforcement of these restriction or any other building restrictions applicable to said property; for payment of operating expenses of the Association or for any other purpose within the purposes for which the Association is incorporated. in writing of the amount of each annual

SECTION 4 Notice in writing of the amount of each annual assessment attributable to each Lot shall be delivered or mailed to the owner or owners of each Lot (if mailed, then to their last address shown on the records of the Association), no later than November 15, of each year. All assessment charges which shall remain due and unpaid after they are due, shall thereafter be subject to interest at the rate of ten (10%) percent per annum.

SECTION 5 It is expressly understood and agreed that the annual assessment charge and additional assessment charges, any, shall be a lien and encumbrance on the Lot as platted, with respect to which any such charges are made. It is expressly agreed that by the acceptance of title to any of said Lots, or by acquiring right to possession of the same, either actual or constructive under commitment to purchase, the Owner (not including a mortgagee, as long as it is not the Owner), from time of acquiring title thereto, or right to possession thereof under a commitment to purchase, shall be held to have covenanted and agreed to pay to the Association, all charges provided for herein which were due and unpaid at the time of acquiring the title, or right to possession as aforesaid, as well as all assessments thereafter falling due during his ownership or possession thereof. A certificate in writing issued by the Association or its agent shall be given on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which shall set forth the status of said charges. This certificate shall be binding upon the parties hereto.

The liens provided for in this Article IV shall be created and perfected in the following manner: The Association may record an Affidavit of Nonpayment of Annual Assessment in the office of the Register of Deeds of Sedgwick County, Kansas, stating, (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner) of said property, and (c) the amount of the Annual Assessment which is Imposed. The lien shall be deemed created and perfected at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens, or encumbrances which may thereafter in any manner arise or be imposed upon the Lot, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.

SECTION 6 The lien created by this Article IV, may be foreclosed by suit by the Association In like manner as a mortgage on real property is foreclosed. The Association shall have the power to bid at the foreclosure sale and to become the purchaser at any such sale of the Lot which is the subject of such sale. shall A suit to recover a money judgment for unpaid assessments shall be maintainable by the association without foreclosing or waving the lien covering me same.

SECTION 7 In the event a lien is obtained pursuant to this Article IV, and thereafter the Assessment Charge plus interest at the rate of ten (10%) percent per annum from the date the lien is filed shall be fully paid, Declarant or the Association, shall within ten (10) days following payment file with the Register of Deeds of Sedgwick County, Kansas, an Affidavit of payment or Assessment Charge, which affidavit shall, (a) refer to and identify the Affidavit of Nonpayment of Assessment Charge which created the lien which has been satisfied, (b) state the legal description of the property affected and (c) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Assessment Charge shall fully and completely release the lien referred to In said Affidavit and said Affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged.

SECTION 8 Sale or transfer of any Lot, shall not affect the assessment lien as to past due assessments nor shall it relieve such Lot for liability from any assessments thereafter becoming due or from the lien thereof.

SECTION 9 (a) The maximum amount of the “assessment unit” as defined in section 2 of this Article IV, for the first calendar year in which the annual assessment is to be made shall not exceed \$75. The “assessment unit” may be increased for any subsequent year by the Directors of the Association without a vote of the membership to an amount which is not more than one hundred fifteen (115%) percent of “assessment unit” for the previous year.

(b) The “assessment unit” for any year commencing after the first calendar year in which the annual assessment is made may be increased to an amount greater than that permitted by Subsection A of this Section 9 only by an affirmative vote of two-thirds (2/3) of the votes entitled to be cast at a meeting of the Members of the Association duly called for such purpose.

(c) Notwithstanding anything to the contrary in (a) and (b) above, under no circumstances, except by the consent of Declarant, its successors or assigns, shall the amount of the assessment unit attributable to Declarant, its successors or assigns, exceed \$75. In the event the amount of the “assessment unit” in any given year is greater than \$75, then, unless otherwise agreed by Declarant, the excess of such amount over \$75, shall be attributed pro-rata to the Lots not owned by Declarant and paid by the owners thereof.

SECTION 10 Notwithstanding any of the foregoing, any Lot or Lots dedicated to, and accepted by, a local public authority and all Lots owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Kansas, shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments regardless of ownership.

ARTICLE V

COVENANTS FOR MAINTENANCE

SECTION 1 Maintenance of Lots and Improvements; Lien

(a) All Owners (other than Declarant) shall keep all Lots owned by them and all improvements therein or thereon, in good repair, including, but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management.

(b) If in the opinion of the Declarant or the Association, any Owner fails to perform the duties imposed by the preceding paragraph (a) the Declarant, or the Association after approval by a two-thirds (2/3) decision of the Board, and after fifteen (15) days' written notice to such Owner to remedy such default, shall have the right, through its agents and employees, to enter upon the Lot or Lots involved and to repair, maintain, repaint and restore such Lot or Lots or such Improvements and the cost thereof (Hereinafter sometimes called the "Maintenance Charge") shall be a binding personal obligation of such Owner and the cost thereof shall be a lien upon any such Lot or Lots if created and perfected in the following manner: Declarant or the Association may record an Affidavit or Nonpayment of Maintenance Charge in the office of the Register of Deeds of Sedgwick County, Kansas, stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property, and (c) the amount of the Maintenance Charge which is unpaid. The lien shall be deemed created and perfected at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the property whether contract, mortgage or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.

SECTION 2 Foreclosure The lien created by this Article V, may be foreclosed by suit by the Declarant or the Association in like manner as a mortgage on real property is foreclosed. The Declarant or the Association shall have the power to bid at the foreclosure sale and to become the purchaser at any such sale of the Lot or Lots which are the subject of such sale. A suit to recover a money judgment for unpaid Maintenance Charges under this Article V shall be maintainable by the Declarant or the Association without foreclosing or waiving the lien securing the same.

SECTION 3 Release In the event a lien is obtained pursuant to this Article V, and thereafter the Maintenance Charge plus interest at the rate of ten (10%) percent per annum from the date the lien is filed shall be fully paid, Declarant or the Association, shall within ten (10) days following payment file with the Register of deeds of Sedgwick County, Kansas, an Affidavit of Payment of Maintenance Charge, which affidavit shall, (a) refer to and identify the Affidavit of Nonpayment of Maintenance Charge which created the lien which has been satisfied, (b) state the legal description of the property affected and (c) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Maintenance Charge shall fully and completely release the lien referred to in said Affidavit and said Affidavit shall be conclusive evidence to any purchaser or encumbrance or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged.

ARTICLE VI

ARCHITECTURAL CONTROL

SECTION 1 Approval Required No building, fence, landscape scheme, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein or thereto be made until the plans and specifications showing the nature, kind, size, shape, height, materials, and locations of the same shall have been submitted to and approved in writing as to the aforesaid and as to harmony of external design and location in relation to surrounding structures and topography by CHESTER-KAPPELMAN-GAUDREAU, INC., its agents, assignees or successors. In the event CHESTER. CHESTER-KAPPELMAN-GAUDREAU, INC., fails to approve or disapprove such plans and specifications within thirty (30) days after said plans and specifications have been submitted to and received by it, approval will be deemed to have been given.

SECTION 2 Plan Requirements – Such plans and specifications shall be in such form and shall contain such information as may be required by CHESTER-KAPPELMAN-GAUDREAU, INC. but in any event shall include (1) a site plan of the Lot or Lots (including proposed front, rear and side setbacks) of all structures, the location of all parking spaces and driveways on the Lot or Lots; and (2) a grading plan for the particular Lot or Lots.

SECTION 3 Retention of Approved Plans and Specifications

Upon approval by CHESTER-KAPPELMAN-GAUDREAU, INC. , of any plans and specifications submitted hereunder a copy of such plans and specifications, as approved, shall be deposited for permanent record with CHESTER-KAPPELMAN-GAUDREAU, INC. , and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

SECTION 4 Removal and Alteration of Structures; Lien

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

(b) If fifteen (15) days after the notice of such a violation, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same CHESTER-KAPPELMAN-GAUDREAU, INC., shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding personal obligation of such Owner and the cost thereof shall be a lien upon any such Lot or Lots if created and perfected in the following manner: CHESTER-KAPPELMAN-GAUDREAU, INC., may record an Affidavit of Nonpayment of Removal of Alteration Charges in the office of the Register of Deeds of

Sedgwick County Kansas, stating (a) the legal description of the property upon which the lien is claimed,

(b) the name(s) of the Owner(s) of said property, and (c) the amount of the Removal and Alteration Charges which are unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the property whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other Instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

(c) The lien provided for by this Article VI, may be foreclosed by CHESTERKAPPELMAKGAUDREAU, INC., in like manner as a mortgage of real Property is foreclosed. CHESTER-KAPPELMAN-GAUDREAU, INC., shall have the right to become a purchaser at any such sale of the Lot(s) which is the subject thereof. A suit to recover a money judgment for unpaid charges under this Article VI, shall be maintainable by

CHESTER-KAPPELMAN-GAUDREAU, INC., without foreclosing or waiving the lien securing the same.

(d) In the event a lien is obtained pursuant to this Section and thereafter the Removal or Alteration Charges plus interest at the rate of ten (10%) percent per annum from the date the lien is filed shall be fully paid, CHESTER-KAPPELMAN-GAUDREAU, INC., shall within (10) days following payment file with the Register of Deeds of Sedgwick County, Kansas, an Affidavit of Payment of Removal or Alteration Charges which affidavit shall, (a) refer to and identify the Affidavit of Nonpayment or Removal or Alteration Charges which created the lien which has been satisfied, (b) state the legal description of the property affected, and (c) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Removal or Alteration Charges shall fully and completely release the lien referred to in said Affidavit and said Affidavit shall be conclusive evidence to any purchaser or encumbrance or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged.

SECTION 5 Certificate of Compliance Upon completion of the construction of alteration of any structure in accordance with plans and specifications approved by CHESTER-KAPPELMAN-GAUDREAU, INC., it shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed, and stating that the plans and specifications, the location of structure and the uses to be conducted thereon have approved and that such structure complies therewith. Preparation and recording of such Compliance issued in accordance with the provisions of this Section 5, shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrance in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all structures on the Lot, and the use or uses described therein comply with all requirements of this Article VI, as to which CHESTER-KAPPELMAN-GAUDREAU, INC., exercises any discretionary or interpretive powers.

SECTION 6 Right of Inspection CHESTER-KAPPELMAN-GAUDREAU, INC., may at any reasonable time or times enter and inspect any Lot or any improvements thereof for the purpose ascertaining whether the maintenance, construction, or alteration of structures thereon are in compliance with the provisions hereof; and neither CHESTER-KAPPELMAN-GAUDREAU, INC., nor any of its agents shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

SECTION 7 No Liability - Neither CHESTER-KAPPELMAN-GAUDREAU, INC., nor any of its successors, assigns, agents, officers, directors, or employees, shall be liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any performance or non-performance of any duties or functions under this Article VI and the Association shall hold CHESTER-KAPPELMAN-GAUDREAU, INC., its successors, assigns agents, officers, directors, and employees harmless therefrom.

SECTION 8 Assignment – The Architectural Control and all rights and obligations Incumbent therewith granted unto CHESTER-KAPPELMAN-GAUDREAU, INC., under this Article VI, shall remain with it even after conveyance of the Common Areas to the Association; provided however, CHESTER-KAPPELMAN-GAUDREAU, INC., may assign such Architectural Control and its rights and obligations hereunder to the Association at any time deemed appropriate by it (CHESTER-KAPPELMAN-GAUDREAU, INC.) and the Association agrees to accept and administer such Architectural Control at and after the time CHESTER-KAPPELMAN-GAUDREAU, INC., assigns said Architectural Control. CHESTER-KAPPELMAN-GAUDREAU, INC., shall, at such time, also deliver to the Association all plans and specifications deposited with it pursuant to Section 3 of this Article VI.

ARTICLE VII

GENERAL COVENANTS AND RESTRICTIONS

SECTION 1 Structures; Division of Lots; Utilities; Trailers; and Fences - Without the prior written approval of CHESTER-KAPPELMAN-GAUDREAU, INC.,

(1) No previously approved structure within the Properties shall be used for any purpose other than that for which it was originally designed.

(2) No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise.

(3) No facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained.

(4) No boat, boat trailer, house trailer, motor home, camper, camper trailers, or similar items shall be stored in the open on any Lot.

(5) Each residence shall comply with the minimum front, back and side set-back requirements as shown on the recorded plat of the land covered hereby, and as hereinafter immediately provided. No residence, including attached garages, breezeways, attached greenhouses, ells and porches shall be located nearer than eight (8) feet from any side building site or lot line or lines. No residence, including attached garages, breezeways, attached greenhouses, ells and porches shall be located nearer than twenty (20) feet from the rear building site or lot line or lines of any abutting the Common Areas and no nearer than thirty-five (35) feet from the rear building site or lot line or lines of all other lots.

(6) No excavations, except such as are necessary for the construction of a residence or improvement, shall be permitted on any Lot without written permission of CHESTER-KAPPELMAN-GAUDREAU, INC.,

(7) No trash, ashes, dirt, rock or other refuse may be or dumped on any Lot or building site. No building materials of any kind or character shall be placed or stored upon any building site more than thirty (30) days before the commencement of construction of a residence or improvement and then such materials shall be placed within the property lines of the building site upon which they are to be erected and shall not be placed in the street or between the curb and property line.

(8) No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon said land, nor shall any trailer be moved, placed or permitted to remain upon a building site subject to these Covenants.

SECTION 2 Fences – No fences shall be erected or located on any lot until the type, style, design, material, height and location thereof shall first have been approved in writing by the Declarant.

SECTION 3 Animals – No birds, animals, snakes, rodents or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of any such creatures be conducted on the Properties. The Declarant or the Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on the Lot.

SECTION 4 Signs -No sign or other advertising device of any nature shall be placed upon any Lot except as may be permitted by any rule or regulation relating to signs and advertising devices adopted or promulgated by the Declarant or the Association.

SECTION 5 Temporary Building – No temporary building, trailer, garage, basement, tent, outbuilding or building in the course of construction shall be used temporarily or permanently as a residence of any Lot.

SECTION 6 No Storage; Trash – No lumber, metals, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on any Lot or on any of the Common Areas, except building materials may be stored on a Lot during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, at such place on the Lot so as to provide access to persons making such pickup. At all other times such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. Declarant or the Association, in their discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape color and type of containers permitted and the manner of storage of the same on the Properties.

SECTION 7 Pipes – No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses and movable pipes used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, mineral, gravel or earth.

SECTION 8 Hedgerows Not To Be Removed – The hedgerows located along the north side of Block 1 of the “Addition” and along the west side of Blocks 5 and 9, of the “Addition” shall not be removed without the written consent of Declarant. Nothing herein contained shall be deemed to prohibit usual or ordinary trimming or pruning of said hedgerows, provided said trimming and pruning is carried on in such manner that the hedgerows are not permanently injured or destroyed.

SECTION 9 Right To Trim or Prune – Declarant or the Association shall have the right to enter upon any Lot and trim or prune, at the expense of Owner, any hedge or other planting which in the opinion of Declarants or the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided however, that the Owner shall be given fifteen (15) days prior written notice of such action.

SECTION 10 Motor Vehicles – No motor vehicles of any type other than maintenance vehicles shall be operated on any of the Common Areas or on any sidewalks and bicycle paths located in the Common Areas.

SECTION 11 Sight Lines – No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular areas formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

SECTION 12 Noxious, Dangerous, and Offensive Activities Prohibited – No noxious, dangerous or offensive activity or things shall be carried on or permitted, nor shall anything be done which may become an annoyance or nuisance to the neighborhood.

SECTION 13 Exploration – Oil Drilling, oil development operations, refining, mining operations of any kind or quarrying shall not be permitted upon or in any of the building sites subject to these Covenants, nor shall oil wells, tanks, tunnels, mining excavations or shafts be permitted upon or in any of the building sites covered by these Covenants. Fuel oil storage tanks as a part of the heating equipment of a residence shall be permitted only if located underground.

SECTION 14 Maintenance of Drainage Channels and Swales – Owner shall maintain, mow and keep in good repair and condition all drainage channels and swales located on any Lot owned by such Owner.

SECTION 15 Miscellaneous – The right of CHESTER-KAPPELMAN-GAUDREAU, INC., to pass upon those matters set forth in Section 1 of this Article VII, shall remain with it even after conveyance of the Common Area to the Association; provided however, CHESTER-KAPPELMAN-GAUDREAU, INC.,

may assign such right of approval to the Association at any time deemed appropriate by it (CHESTER-KAPPELMAN-GAUDREAU, INC.), and the Association agrees to accept and administer such right. The provisions of Section 2 through 13 of this Article VII, shall pertain to and be enforceable by the Declarant until such time as the Common Areas are conveyed to the Association and thereafter such provisions shall pertain to and be enforceable by the Association.

SECTION 16 No Liability – Neither CHESTER-KAPPELMAN-GAUDREAU, INC., nor any of its successors, assigns, agents, officers, directors or employees, shall be liable to any Owner or to any person, firm, corporation or other entity for any damages arising from any performance or non-performance of any duties or functions under this Article VII, and the Association shall hold CHESTER-KAPPELMAN-GAUDREAU, INC., its successors, assigns, agents, officers, directors and employees, harmless therefrom.

ARTICLE VIII

ZONING AND SPECIFIC RESTRICTIONS

The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or me laws, rules, regulations and resolutions of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or this Declaration shall be taken to govern and control.

ARTICLE IX

RESIDENTIAL PROTECTIVE COVENANTS AND RESTRICTIONS

SECTION 1 Limited to Residential Lots – The provisions of this Article IX, shall relate to all Lots whether zoned for single family residential or multifamily residential lots.

SECTION 2 Home Professions and Industries – No profession home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of Declarant or the Association. Declarant or the Association, in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home Industry shall be permitted unless it is considered, by Declarant or the Association to be compatible with a high quality residential neighborhood.

SECTION 3 Model Home and Real Estate Offices – All else herein, notwithstanding, with the written approval of Declarant or the Association, any Lot may be used for a model home or for a real estate office until all homes in the Properties are initially sold.

SECTION 4 Laundry and Machinery – No clothing or other household fabric shall be hung in the open on any Lot unless the same are hung from an umbrella or retractable clothes hanging device which is removed from view when not in use or unless the same is enclosed by a fence or other enclosure at least six (6) inches higher than such hanging articles, provided such fence or other enclosure is approved by Declarant or the Association. No machinery shall be placed or operated upon any Lot except such machinery as is usual in maintenance of a private residence.

SECTION 5 Discretion – Notwithstanding any other provisions herein, Declarant or the Association may authorize any

Owner with respect to his Lot to:

- (1) Temporarily use a single-family dwelling house for more than one (1) family.
- (2) Locate structures other than the principal dwelling house within set-back areas; and

(3) Use Structures other than the principal dwelling house for residence purposes on a temporary basis.

SECTION 6 Requirement to Plant Lawn and Trees, Shrubs or Bushes – As soon as practicable after completion of a residence on a Lot, and no longer than twelve (12) months from said date, the Owner thereof shall plant a lawn and at least fifteen (15) perennial shrubs, bushes or trees on such Lot.

ARTICLE X

ENFORCEMENT

By acceptance of title or acquisition of a right of possession under a commitment to purchase, each Owner shall be held and deemed to have vested in Declarant or the Association or any Owner, the right and power to enforce, by any proceeding at law, equity, or otherwise, all restrictions, conditions, covenants, reservations, liens, assessments, and charges now or hereafter imposed by the provisions of this Declaration. The Association shall further have the power by a three-fourths (3/4) vote of the Board of Directors to levy fines up to and including \$500, against any Owner who has breached any of the provisions of this Declaration or of the Articles or Bylaws of the Association. Failure to enforce any covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XI

ADDITIONAL LAND

Declarant may, from time to time, subject additional real property, including additional Common Areas, to all of the terms, provision, and conditions of this Declaration, by the execution and filing for recordation with the Register of Deeds of Sedgwick County, Kansas, of an instrument expressly stating an intention to do so and describing such additional real property to be so subjected; provided however, that such additional real property must be adjacent to and contiguous with Properties as they now are described or as they may in the future be expanded and must be owned by Declarant at the time of the filing of such instrument. During twenty (20) years following the date of the recording of this Declaration, Declarant may subject such additional real property to this Declaration in their sole absolute discretion subject to the foregoing requirements and conditions. From and after the the termination of said twenty (20) year period, such additional real property may be subjected to this Declaration provided that each such action is approved in writing by two-thirds (2/3) of the votes entitled to be cast at a meeting of the Members of the Association duly called for such purpose.

ARTICLE XII

POWER OF ASSIGNMENT AND DELEGATION

Declarant shall have the power to assign and delegate to the Association or any of its successor or successors at any time and from time to time, all or any part of any of the rights, powers and authority, contained in this Declaration in accordance with the provisions of Article I, Section 11 hereof.

ARTICLE XIII

SEVERABILITY

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

ARTICLE XIV

MISCELLANEOUS

SECTION 1 All titles used in this Declaration, including those of Articles, Sections, and Subsections, are intended solely for convenience of reference, and the same shall not, nor shall any of them affect that which is set forth in these Articles. Sections, or Subsections nor any of the terms are provisions of this Declaration nor the meaning thereof.

SECTION 2 The singular shall include the plural and the plural the singular unless the context requires the contrary and the masculine, feminine and neuter shall each include the masculine, feminine, and neuter as the context requires.

SECTION 3 Reference herein to either the Association or Declarant shall include their successors and assigns who shall succeed to the rights, powers, obligations and authority of their predecessor.

ARTICLE XV

AMENDMENT

The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first ten (10) years following the recording of this Declaration by Declarant in its sole discretion by an Instrument in writing signed by Declarant in its sole discretion by an instrument in writing signed by Declarant setting forth such amendments and filed of record; this Declaration may be amended during the second ten (10) year period following the recording of this Declaration by an instrument in writing setting forth such than amendments signed by the Owner(s) possessing not less than ninety (90%) percent of the votes entitled to be cast at a meeting of Members of the Association duly called for such purpose; and, thereafter, by an instrument in writing signed by the Owner(s) of not less than seventy-five (75%) percent of the votes entitled to be cast at a meeting of the Members of the Association duly called for such purpose. Said instruments signed by the Owner(s) as aforesaid are to be of record in the office of the Register of Deeds of Sedgwick County, Kansas.

Notwithstanding any of the prior provisions of this Article III, Sections 1 or 2, shall be effective unless consent in writing to the amendment of be effective unless Sections 1 or 2 of said Article III, shall first have been obtained from the Sedgwick County Public Works Department or such other public body as may then have jurisdiction over the Common Areas.

IN WITNESS THEREOF, the undersigned, being the Declarants herein have executed this Declaration as of this 28th day of October, 1980.

CHESTER-KAPPELMAN-GAUDREAU, INC.,

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS APPLICABLE TO A PART OF KAPPELMAH'S BEL AIRE HEIGHTS AN ADDITION TO SEDGWICK COUNTY, KANSAS

THIS Amendment to Declaration of Covenants, Conditions, and Restrictions Applicable to a Part of Kappelman's Bel Aire Heights, an Addition to Sedgwick County, Kansas, made on the date hereinafter set forth by Chester-Kappelman Group, Inc., formerly known as Chester-Kappelman-Gaudreau, Inc.:

WITNESSETH:

WHEREAS, the Declaration of Covenants, Conditions and Restrictions Applicable to a Part of Kappelman's Bel Aire Heights, an Addition to Sedgwick County, Kansas, was filed with the Register of Deeds of Sedgwick County, Kansas. at Film 453 at Page 989; and

WHEREAS, certain construction conditions have made it necessary to amend said Declaration; and

WHEREAS, pursuant to Article XV of said Declaration, Chester-Kappelman Group, Inc., formerly known as Chester-Kappelman-Gaudreau, Inc. has the power to amend said Declaration in its sole discretion by an instrument in writing signed by Chester-Kappelman Group, Inc., formerly known as Chester-Kappelman Group, Inc. and filed of record, setting forth such amendment; NOW THEREFORE, Chester-Kappelman Group, Inc., formerly known as Chester-Kappelman-Gaudreau, Inc., hereby declares that the Declaration of Covenants, Conditions, and Restrictions Applicable to a Part of Kappelman's Bel Aire Heights, an Addition to Sedgwick County, Kansas. is amended as follows:

ARTICLE VII, Section 1 (5), is deleted in its entirety and inserted in its place is the following:

(5) Each residence shall comply with the minimum front, back and side set-back requirements as shown on the recorded plat of the land covered hereby, and as hereinafter immediately provided. No residence, including attached garages, breezeways, attached greenhouses, ells and porches, shall be located nearer than six (6) feet from any side building site or lot line or lines. No residence, including attached garages, breezeways, attached greenhouses, ells and parches shall be located nearer than twenty (20) feet from the rear building site or lot line or lines of any lot abutting the Common Areas and no nearer than thirty-five (35) feet from the rear building site or lot line or lines of all other lots.

IN WITNESS WHEREOF, the undersigned, being the original Declarant in the above described Declaration of Covenants, Conditions, and Restrictions Applicable to a Part of Kappelman's Bel Aire Heights, an Addition to Sedgwick County, Kansas, has executed this Amendment to the original Declaration this 25th day of January, 1983.

CHESTER-KAPPELMAH GROUP, INC.,

formerly known as Chester-Kappelman-Gaudreau, Inc.