

**AMENDMENT TO THE RESTRICTIVE COVENANTS AND  
CONDITIONS PERTAINING TO A SUBDIVISION OF LAND IN LINN  
COUNTY, KANSAS KNOWN AS LAKE CHAPARRAL**

This amendment, made this 24<sup>th</sup> day of January, 1987, by a vote of not less than fifty Percent (50%) Amended again on this 14<sup>th</sup> day of January, 2009, by a vote of not less than twenty-five (25%) of the lots into which the tract which is the subject of this amended Restrictive Covenants and Conditions is sub-divided.

WITNESSETH:

WHEREAS there are Restrictive Covenants and Conditions pertaining to a sub-division of land in Linn County, Kansas which land is described as follows:

The Southwest Quarter and the West half of the Southeast Quarter and the South half of the Northwest Quarter and the West half of the Northeast Quarter of Section Twenty-two (22), Township Twenty-one (21) South, Range Twenty-three (23) East.

The East half of the Northeast Quarter, EXCEPT a tract beginning at the center of the road at the Southeast corner of the Northeast Quarter of Section Twenty-two (22); thence North eighty (80) rods; thence West Twenty (20) rods; thence South eighty (80) rods; thence East twenty (20) rods to the point of beginning.

A strip of land twenty and five-eighths (20 5/8) feet wide off the East side of the Northwest Quarter of Section Twenty-seven (27), Township Twenty-one (21) South, Range Twenty-three (23) East.

The South half of the Northeast Quarter, except the one-half acre in a square form in the Northeast corner thereof; Also the East fifty (50) acres of the Southeast Quarter; all being in Section Twenty one (21), Township Twenty one (21) South, Range twenty-three (23), East of the Sixth Principal Meridian, Linn County, Kansas.

and,

WHEREAS, these Restrictive Covenants and Conditions are dated October 31, 1973 and filed the 15<sup>th</sup> day of April, 1974, in the office of the Register of Deeds of Linn County, Kansas in book Miscellaneous 22 at page 577,  
and,

WHEREAS, said Restrictive Covenants and Conditions provide, in Article VIII, that from and after eight (8) years from the date hereof, this indenture may be modified or amended by a vote of the owners of not less than 50% of the lots into which this tract may be sub-divided, for an additional eight (8) year period, and;

WHEREAS, the owners of not less than 50% of the lots into which the tract is sub-divided have voted to amend the Restrictive Covenants and Conditions by providing that said Restrictive Covenants and Conditions shall be deleted in their entirety and the following Declaration of Restrictive Covenants and Conditions substituted therefore;  
NOW, THEREFORE, pursuant to Article VIII of the Restrictive Covenants and Conditions referred to above, the same are hereby amended by deleting them in their entirety and substituting the following therefore;

## **DECLARATION OF RESTRICTIVE COVENANTS AND CONDITIONS**

### **ARTICLE I Definitions**

**Section 1** The following words when used in this Declaration or any Supplemental Declaration (unless the context shall Prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the LAKE CHAPARRAL PROPERTY OWNERS ASSOCIATION

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of The Properties and intended to be devoted to the common use and enjoyment of the owners of The Properties.

(d) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.

(e) "Owner" shall mean and refer to the record owner, of the fee simple title to any lot situated upon The Properties. And also to any purchaser of any Lot under a contract for deed or other agreement. However, any person who has defaulted in the performance of any of the payments, terms and conditions of the contract for deed shall cease to be an owner within the meaning of this declaration, so long as in default.

(f) "Member" shall mean and refer to all those owners who are members of the Association as provided in Article IX Section 1, hereof.

(g) "Dwelling" shall mean and refer to dwelling house, single wide or multiple unit manufactured home.

## ARTICLE II

### Property Subject To This Declaration: Additions Thereto

**Section 1. Existing Property** - The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Linn County, Kansas and is more particularly described as follows:

The Southwest Quarter and the West half of the Southeast Quarter and the South half of the Northwest Quarter and the West half of the Northeast Quarter of Section Twenty-two (22), Township Twenty-one (21) South, Range Twenty-three (23) East.

The East half of the Northeast Quarter, EXCEPT a tract beginning at the center of the road at the Southeast corner of the Northeast Quarter of Section Twenty-two (22); thence North eighty (80) rods; thence West Twenty (20) rods; thence South eighty (80) rods; thence East twenty (20) rods to the point of beginning.

A strip of land twenty and five-eighths (20 5/8) feet wide off the East side of the Northwest Quarter of Section Twenty-seven (27), Township Twenty-one (21) South, Range Twenty-three (23) East.

The South half of the Northeast Quarter, except the one-half acre in a square form in the Northeast corner thereof; Also the East fifty (50) acres of the Southeast Quarter; all being in Section Twenty one (21), Township Twenty one (21) South, Range Twenty three (23) East of the Sixth Principal Meridian, Linn County, Kansas. All of which real property shall hereinafter be referred to as "Existing Property".

**Section 2. Additions to Existing Property** - Additional lands may become subject to this Declaration in the following manner.

(a) Additions. Upon approval in writing of the Association pursuant to a vote of its members as provided in its Articles of Incorporation, the owner of any property who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Restrictive Covenants and Conditions, as described below.

The additions authorized under this section shall be made by filing a record a Supplementary Declaration of Restrictive Covenants and Conditions with respect to the additional property which shall extend the scheme of the covenants of the restrictive covenants and conditions of this Declaration to such property.

Such Supplementary Declaration may contain such complimentary additions and modifications of the Restrictive Covenants and Conditions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

(b) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the restrictive covenants and conditions established by this Declaration within the Existing Property together with the restrictive covenants and conditions established upon any other properties as one scheme. No such merger or

consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with the Existing Property except as hereinafter provided.

### **ARTICLE III**

#### **Streets, Roadways and Trails**

1. The Association shall have the power to reconstruct, improve, contract for, maintain or repair streets or roadways of any kind or quality upon the several strips of land which have been conveyed, are herein conveyed or are to be conveyed to it and which are designated on said plats as streets, drives, lanes, trails, roads or walkways, and to repair and maintain the dams and lakes constructed on the above described property.

2. The association shall have the right and power to provide for the plowing or removal of snow from said streets, roadways or trail ways.

3. The Association shall have the right and power to plant, care for, spray, trim, protect and replant shrubbery and to sow or resow, trim and care for grass in or upon the drives, streets, lanes and roads which have conveyed, are herein conveyed or are to be conveyed, or in or upon any other areas of the LAKE CHAPARRAL development area.

4. The Association shall have the power and right to provide lights in or on all drives, lanes, circles, streets and roads, and on or at all gateways or entrances, or in such other places in or about the area conveyed by this indenture as it may in its judgment determine.

5. The Association shall have the right and power to grant easements in, over or under the streets, drives, lanes, trails or roads conveyed to it for any of the purposes set out in Article IV hereof. Walkways and trails may be set up and established by the Association and maintained by the Association for the use of the lot owners, present and future of said subdivided tract.

### **ARTICLE IV**

#### **Utilities**

1. The Association shall have the right and power to construct, to lease, to purchase or in any other manner to construct for or provide for sewers or sewerage disposal facilities, drainage, water, gas, electricity, street lighting,

telephone service, or fire protection facilities to serve all or any part of said above described tracts.

2. In providing for such services or facilities, the Association may itself make use of or it may convey, transfer or assign whole or partial rights in and to the easements created by the original restrictive covenants and conditions and granted unto the Trustee therein, or easements created and set out on the plats of the subdivision of the above described tract.

## **ARTICLE V**

### **Covenants**

1. The covenants in this Article shall run with the land and shall be binding upon all parties hereto and all persons claiming under them and all owners as defined above, until November 1, 1996, at which time said covenants shall be automatically extended for a period of ten (10) years unless, by a vote of the majority of the then owners of the lots, it is agreed to change such covenants in whole or in part, it being understood that an owner shall be entitled to cast as many votes as he may own lots in said addition.

2. The living accommodations shall face the street upon which the lot fronts and no part thereof shall be nearer than twenty-five (25) feet from the front lot line, and the distance from each of the dwelling shall be no closer than five (10) feet from the side of the line of said lot, unless otherwise shown by the building lines on the subdivision plat.

When topography or lot dimensions are not conducive to these covenants, the Association will consider exceptions on submission of building plans.

3. All building sites shall be limited to one (1) single family dwelling.

All other structures shall be in the rear of the living accommodations and shall be slightly, of neat construction and of a character to enhance the value of the property. A boat house and/or garage may be constructed separately or attached to the dwelling, but also must be slightly, of neat construction and of a character to enhance the value of the property..

4. When any Dwelling is erected on any lot purchased in this subdivision, the owner shall at the same time construct and install sewage disposal facilities approved by the appropriate governmental authority. No dwelling construction shall begin without the owner having first obtained from

the Association, a permit for the installation of sewage disposal facilities. No such permit shall be issued by the Association for any kind of septic tank and sub-surface disposal system unless and until the owner has furnished the Association the results of a percolation test to be made by a professional engineer registered in the State of Kansas, all at the expense of the owner. The percolation test shall determine the sewage system to be used by the owner, If, in the event the percolation rate would indicate that an individual septic tank and sub-surface disposal system is not feasible, then an enclosed vault type system that can be periodically pumped must be provided, No automatic dishwashers or garbage disposal systems may be installed in any dwelling unless shown to be feasible by the results of the percolation test as related to the sewage system used, and if not feasible, shall not be installed until such time as a sanitary system is installed. The Association shall maintain periodic inspections of all sewage disposal systems. Upon the failure of any owner to properly maintain any sewage system in accordance with the standards set forth in this paragraph and in the permit for construction granted by the Association, the Association shall then and there, on the behalf of all the other owners, take such action as shall be necessary to restore the system to approved standards, all at the expense of the owner including action for injunctive relief.

When any improvements are erected on any lot purchased in this subdivision, the owner shall also comply with any and all Federal, State or County statutes, resolutions, ordinances or regulations and, if deemed appropriate by the Association, furnish to the Association evidence that the owner is in compliance with these Federal, State and County laws and regulations.

5. No debris, trash or unsightly accumulation of materials shall be allowed to remain on the premises and there shall be no outside storage facilities for any of the aforementioned.

6. All material used for the construction of the outside of the dwelling shall be new and construction must be completed within six (6) months from the commencement of said construction of any type.

7. In addition to the foregoing restrictions and stipulations, no dwelling shall be constructed on any lot purchased in this subdivision with less than the square footage shown on each plat within said description as recorded. No building shall be constructed below the \_\_\_\_\_ Foot elevation line notwithstanding other provisions herein. If additional properties are platted the minimum square footage for living accommodations for each area shall be determined and restricted by an addendum to these restrictions to be filed at the

same time the plat is recorded for additional areas. No basement shall be occupied until the dwelling is completed. All buildings must be finished on the outside. All sheds and garages are to be used for storage, work areas and parking only and cannot be used for living accommodations. All building plans must be approved by the Association.

8. No signs may be placed or maintained on any lot other than the name and/or address of the owner, which signs must be sightly and of neat construction.

9. No animals shall be kept, maintained or raised on said premises except house pets, which shall be kept on a leash when on said premises when not in an enclosure. No poultry or livestock, such as horses, cattle or pigs, shall be stabled within the confines of the subdivision.

10. Minimum square footage for buildings constructed on each lot shall be determined by the amount of square footage listed in the recorded plat of each section of the development.

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

12. Any structure defined as a mobile home or manufactured home in accordance with K.S.A. 77-201 forty first, that is more than 15 years old as of the date of proposed installation shall not be allowed on any lot in the subdivision for any purpose.

Further, prior to installation of any mobile home on a lot in the subdivision, said mobile home shall be inspected by at least two (2) members fo the Board of Directors. (*Voted and passed on May 5, 2007*)

**ARTICLE VI**  
**General Powers**

1. The Association shall have the right and power to provide for and maintain tennis courts, playgrounds, gateways, entrances, drinking fountains, lakes, streams and other ornamental or recreational features in said subdivision on any lands set aside for the general use of the owners of the lots in said subdivision or to which the said owners have access and the use thereof.

2. The Association shall have the right and power to care for and maintain any and all vacant lots and the lake and lakefront in said subdivision, remove weeds and cut grass thereon, to pick up and remove therefrom loose

materials, trash and rubbish of all kinds, and to do any and all other things necessary or desirable in the judgment of the Association to keep such vacant and unimproved property and said Lake and lakefront neat in appearance and in good order.

Each lot must be mowed and kept free of weeds and underbrush for the general appearance of the development and prevention of fires.

If the owner does not fulfill this requirement, the Association reserves the right to mow and clean up said lot and to charge each owner a reasonable fee for this service.

Failure to pay the charge where it has become necessary to mow and clean said lot shall give the right to the Association or its agent, to place a lien against the property for this service.

3. The Association shall have the right and duty to enforce, either in its own name or in the name of any owner within the subdivision, any and all restrictions which may now or which may hereafter be imposed upon any of the lots in said subdivision, either in the form as originally placed or as modified subsequently.

4. The Association shall have the right and power to construct and maintain such boat dock facilities as it may deem necessary for the use and benefit of owners of lots in said subdivision.

5. The Association shall further have the power to regulate and determine the size of motors to be used on boats on the lake. The Association may, in its sole discretion, set aside portions of the lake, at certain periods, for the use for water skiing.

## **ARTICLE VII**

### **Assessment**

**Section 1. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot hereby covenants and agrees to pay to the Association:

(1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the

property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the owners of The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties, including but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

**Section 3. Basis and Maximum of Annual Assessments.** The annual assessment amount as last voted in by a Quorum of the Lake Chaparral Property Owners. Any subsequent years assessments may be increased by a vote of the Owners, as herein provided and such increase shall be applicable to all subsequent years unless increased or reduced by a vote of the Owners, but increases should not exceed the 'Cost of Living' increases since last Assessment raise.

Properties purchased at Tax Auctions will be subject to Pro-rated Assessments effective from the date of purchase.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessments for any year at a lesser amount.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon Common Properties, including the necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of the majority of the votes of Owners who are voting in person or by proxy at the meeting duly called for this purpose, written notice of which shall be sent to all Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting.

**Section 5. Change in Basis and Maximum of Annual Assessments.** Subject to the limitations of Section 3, hereof, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively,

provided that any such change shall have the assent of a majority of the votes of Owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be to all Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting. The Board of Directors of the Association or any Owners of the Association shall have the right to solicit proxies for the purpose of voting on a change in the basis and maximum of the annual assessments.

**Section 6. Quorum for any Action Authorized Under Sections 4 and 5.** The quorum required for any action authorized by Sections 4 and 5 hereof shall be twenty five percent (25%) of those members entitled to cast votes who are present at the meeting in person or by proxy.

**Section 7. Date of Commencement of Annual Assessments; Due Date:** The annual assessments provided for herein shall commence on the date (which should be the first day of a month) fixed by the Board of Directors of the Association to be the date of Commencement.

The due date for any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

**Section 8. Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of any commencement and the amount of assessment against each lot for the assessment period at least thirty (30) days in advance of such date or period and shall at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall, upon demand, at any time furnish to an Owner a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid, Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 9. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of Association.** If the assessments are not paid on the date when due, then such assessments shall become delinquent and shall, together with such interest thereon and costs thereof as hereinafter provided, become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees,

personal representatives and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessments shall bear interest from the date of the delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property and in the event a judgment is obtained, such judgment shall include interest on the assessment as provided, together with the costs of the action.

Gate Cards will be cancelled if Assessments are not paid, or arrangements for payments have been made and not kept Current

**Section 10. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now and hereafter placed upon the property subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

**Section 11. Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charge and lien created herein: (a) All common properties as defined in Article I, Section 1, hereof: (b) all properties exempted from taxation by the laws of the State of Kansas, upon the terms and to the extent of such legal exemption.

Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens.

## **ARTICLE VIII**

### **Membership and Voting Rights of the Association**

**Section 1. Membership.** Every person or entity who is an owner of any lot which is subjected by this Declaration to assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an

obligation shall not be a Member.

**Section 2. Voting Rights.** Each Member of the Association shall be entitled to one (1) vote for each lot in which he holds the interest required for membership by Section 1. When one or more persons holds such interest or interests in any lot all such persons shall be Members and the vote for each such lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any lot.

## **ARTICLE IX Organization**

The Association shall be organized according to the terms of the Articles of Incorporation of Lake Chaparral Property Owners, a non-profit corporation, which were filed with the office of the Secretary of State, State of Kansas, on September 7, 1982 and according to the terms of the Bylaws of the Lake Chaparral Property Owners dated February 22, 1983, both according to their terms at this time or as they may be subsequently amended.

## **ARTICLE X Amendments**

1. The restrictive Covenants and Conditions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association and its Members, or the Owner of any lands subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of 20 years. This declaration may be modified or amended by a vote of the Owners of not less than 50% of the Lots unto which this tract is subdivided.

2. For purposes of voting on a modification or amendment of this Declaration any Owner, as defined in Article I hereof, shall be entitled to one (1) vote. When one or more persons holds such interest or interests in any lot all such persons shall be Members and the vote of each such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

*Amendment* - The quorum required for any action under this Article shall be twenty-five percent (25%) of those members entitled to cast votes who are present at the meeting in person or by proxy.

**ARTICLE XI**  
**General Provisions**

**1. Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**2. Enforcement.** Enforcement of these Restrictive Covenants and Conditions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or conditions, either to restrain violation or to recover damages, and against the land to enforce any lien created by these Covenants and Conditions; and failure by the Association and its Members, or any Owner to enforce any covenant or condition herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**3. Severability.** Invalidation of any one of these Covenants or Conditions by judgment or Court order shall in no wise affect any other provisions which shall remain in full force and effect.

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(This instrument was filed for record on the 14<sup>th</sup> day of January 2009, at 8:32 o'clock am and recorded in Book 404 Page 507 - Kristy S. Schmitz - Register of Deeds, Linn County, Kansas)