

SIXTH AMENDED DECLARATION OF PROTECTIVE COVENANTS  
FOR TIMBER CREEK II, PHASE III, PHASE IV, PHASE V AND PHASE VI PLATS  
POTTAWATOMIE COUNTY, KANSAS

This instrument constitutes a Sixth Amended Protective Covenants by the Declarant, Rees Development Company, Inc., to the original Declaration of Protective Covenants for Timber Creek II, Phase III Plat, Pottawatomie County, Kansas, dated December 3, 1994, filed for record on January 9, 1995 in Book 283 at Page 419 of the Records of the Register of Deeds of Pottawatomie County, Kansas, and the First Amendment to Declaration of Protective Covenants for Timber Creek II, Phase III Plat, Pottawatomie County, Kansas, dated June 7, 1999, and filed for record on July 13, 1999, in Book 331 at Page 130 of the Records of the Register of Deeds of Pottawatomie County, Kansas, adding to the tracts and parcels covered by said Protective Covenants, Timber Creek II, Phase IV, encompassing in all, the tracts and parcels of real estate, as fully described in Article I of said Second Amended declaration of Protective Covenants for Timber Creek II, Phase III, and Phase IV Plats, Pottawatomie County, Kansas, filed for record on April 24, 2001, in Book 350 at Page 5 of the Records of Register of Deeds of Pottawatomie County, Kansas, and the Third Amended Declaration of Protective Covenants for Timber Creek II, Phase III, and Phase IV Plats, Pottawatomie County, Kansas, filed for record on September 6, 2001, in Book 356 at Page 109 of the Records of the Register of Deeds of Pottawatomie County, Kansas, and the Fourth Amended Declarations of Protective Covenants filed for record on December 31, 2001, in Book 362 at Page 123 of the Records of the Register of Deeds of Pottawatomie County, Kansas, as well as amending said Second, Third and Fourth Amended Declarations of Protective Covenants for Timber Creek II Phase III and Phase IV Plats, and Fifth Amended Declarations of Protective Covenants as to all the above described platted descriptions for Timber Creek II, and as to lands described in the Plat of Timber Creek II, Phase V, filed for record on the 30th day of Sept, 2002, In Book C at Page 100 of the records of the Register of Deeds of Pottawatomie County, Kansas, and as to lands described in the Plat of Timber Creek II, Phase VI, filed for record on the 26th day of June, 2006 in Book D at Page 3 of the Records of the Register of Deeds of Pottawatomie County, Kansas.

ARTICLE I  
PROPERTY SUBJECT TO THIS DECLARATION OF PROTECTIVE COVENANTS

REES Development Company, Inc., (known as "Declarant") as original owner and developer of all that property within the subdivision named Timber Creek II, Phase III, Phase IV and Phase V, located in the County of Pottawatomie, State of Kansas, as is more particularly described as follows:

TIMBER CREEK II, PHASE III

A tract of land in the Southeast Quarter of Section 3, Twp. 10 South, Rg. 8 East of the 6<sup>th</sup> P.M., described as follows:

Beginning at the Southwest Corner of St. Patrick's Cemetery, which is located on the South line of the Southeast Quarter of said Section 3 and S. 90 degrees 00 feet 00 inches W. 481.00 feet from the Southeast Corner of the Southeast Quarter of said Section 3; thence

S. 90 degrees 00 feet 00 inches W. 559.13 feet along the South line of the Southeast Quarter of said Section 3 to the Southeast Corner of Timber Creek II, Phase II; thence

N. 00 degrees and 00 feet 00 inches W. 508.92 (plat, 509.29) feet along the East line of said Timber Creek II, Phase II; thence

N. 39 degrees 05 feet 43 inches W. 124.45 feet (plat N. 39 degrees 04 feet 17 inches W. 123.93 feet) along the East line of said Timber Creek II, Phase II; thence

N. 22 Degrees 20 feet 12 inches W. 243.92 feet (plat, N. 22 degrees 19 feet 10 inches W. 243.63 feet) along the East line of said Timber Creek II, Phase II, to the East line of Timber Creek II, Phase I; thence

N. 50 degrees 56 feet 24 inches E. 190.37 feet along the East line of said Timber Creek II, Phase I; thence

N. 23 degrees 41 feet 32 inches E. 200.19 feet along the East line of said Timber Creek II, Phase I to the Northeast Corner thereof and the center of a Kansas Power & Light (KPL) gas line easement; thence

S. 89 degrees 28 feet 17 inches E. 1002.65 feet along the center of said KPL gas line easement to the East line of the Southeast quarter of said Section 3; thence

S. 00 degrees 59 feet 45 inches W. 681.82 feet along the East line of the Southeast Quarter of said Section 3 to the Northeast corner of aforesaid St. Patrick's Cemetery; thence

S. 90 degrees 00 feet 00 inches W. 481.00 feet to the Northwest Corner of said St. Patrick's Cemetery; thence

S. 00 degrees 59 feet 45 inches W. 443.50 feet to the point of beginning, containing 23.272 acres, and

TIMBER CREEK II, PHASE IV

A tract of land in the Southeast Quarter (SE ¼) of Section 3, Twp, 10, South, Rg, 8 East of the 6<sup>th</sup> P.M., described as follows:

Beginning at a point on the East line of the Southeast Quarter of Section 3 that is S. 00 degrees 10' W. 503.56 feet from the Northeast corner of the Southeast Quarter of said Section 3, being Marked by a ½ inch iron bar; thence

ORIGINAL  
COMPARED WITH RECORD

BETTY JO ABITZ  
Register of Deeds  
Pottawatomie County  
Book: 480 Page: 171  
Receipt #: 21866 Total Fees: \$48.00  
Pages Recorded: 11  
Date Recorded: 6/20/2006 2:52:31 PM



Book 480 Page 171

S. 00 degrees 59 minutes 10 seconds W. 1032.42 feet along the East line of the Southeast Quarter of said Section 3 to the Northeast Corner of Timber Creek II, Phase III, a Residential Planned Unit Development in Pottawatomie County, Kansas, and a ½ inch iron bar; thence

N. 89 degrees 28 minutes 17 seconds W. (Basis of Bearing) 1336.06 feet along the North line of said Timber Creek II, Phase III and the North line of Timber Creek II, Phase I, in Pottawatomie County, Kansas to a Corner of said Timber Creek II, Phase I, and a ½ inch iron bar; thence

N. 05 degrees 31 minutes 44 seconds E. 551.96 feet (plat, N. 05 degrees 35 minutes 05 seconds E. 552.27 feet) along the East line of said Timber Creek II, Phase I to a Corner thereof and a ½ inch iron bar; thence

N. 89 degrees 54 minutes 09 seconds E. 40.56 feet to a ½ inch iron bar; thence  
S. 62 degrees 50 minutes 01 seconds E. 153.39 feet to a ½ inch iron bar; thence  
N. 44 degrees 24 minutes 34 seconds E. 128.88 feet to a ½ inch iron bar; thence  
N. 40 degrees 11 minutes 21 seconds E. 50.15 feet to a ½ inch iron bar; thence  
N. 37 degrees 52 minutes 03 seconds E. 206.49 feet to a ½ inch iron bar; thence  
N. 59 degrees 09 minutes 14 seconds E. 201.77 feet to a ½ inch iron bar; thence  
N. 27 degrees 59 minutes 10 seconds E. 71.11 feet to a ½ inch iron bar; thence  
N. 62 degrees 00 minutes 50 seconds E. 82.25 feet to a ½ inch iron bar; thence  
N. 27 degrees 59 minutes 10 seconds E. 50.00 feet to a ½ inch iron bar; thence  
N. 61 degrees 27 minutes 04 seconds E. 149.63 feet to a ½ inch iron bar; thence  
N. 89 degrees 30 minutes 14" E. 440.15 feet to the point of beginning containing 25.230 acres.

#### TIMBER CREEK II, PHASE V

A tract of land in the Southeast Quarter of Section 3, Township 10 South, Range 8 East of the 6<sup>th</sup> Principal Meridian in Pottawatomie County, Kansas described as follows:

Beginning at the Northeast Corner of the Southeast Quarter of said Section 3;

THENCE South 00 degrees 59 minutes 10 seconds West for a distance of 503.56 feet along the East line of the Southeast Quarter of said section 3 to the Northeast Corner of Timber Creek II, Phase IV, Pottawatomie County, Kansas;

THENCE South 89 degrees 30 minutes 14 seconds West for a distance of 440.15 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 61 degrees 27 minutes 04 seconds West for a distance of 149.63 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 27 degrees 59 minutes 10 seconds West for a distance of 50.00 feet along the North line of said Timber Creek II, Phase IV;

THENCE North 62 degrees 00 minutes 50 seconds West for a distance of 82.25 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 27 degrees 59 minutes 10 seconds West for a distance of 71.11 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 59 degrees 09 minutes 14 seconds West for a distance of 201.77 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 37 degrees 52 minutes 03 seconds West for a distance of 206.49 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 40 degrees 11 minutes 21 seconds West for a distance of 50.15 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 44 degrees 24 minutes 34 seconds West for a distance of 128.88 feet along the North line of said Timber Creek II, Phase IV;

THENCE North 62 degrees 50 minutes 01 seconds West for a distance of 153.39 feet along the North line of said Timber Creek II, Phase IV;

THENCE South 89 degrees 54 minutes 09 seconds West for a distance of 40.56 feet along the North line of said Timber Creek II, Phase IV to the Northwest Corner of said Timber Creek II, Phase IV and a Corner on the East line of Timber Creek II, Phase I, in Pottawatomie County, Kansas;

THENCE North 16 degrees 27 minutes 50 seconds West for a distance of 141.84 feet (Plat, North 16 degrees 23 minutes 50 seconds West for a distance of 141.52 feet) along the East line of said Timber Creek II, Phase I to the Northeast Corner thereof;

THENCE North 62 degrees 48 minutes 15 seconds West for a distance of 141.31 feet (Plat, North 62 degrees 41 minutes 35 seconds West for a distance of 141.52 feet) along the North line of said Timber Creek II, Phase I;

THENCE North 89 degrees 57 minutes 34 seconds West for a distance of 228.84 feet (Plat, West approximately 215 feet) along the North line of said Timber Creek II, Phase I to the Northwest Corner thereof and the center of Elbo Creek and East line of Timber Creek, Phase III, in Pottawatomie County;

THENCE North 37 degrees 41 minutes 01 seconds West for a distance of 33.49 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase III;

Thence North 73 degrees 58 minutes 38 seconds West for a distance of 338.52 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase III;

Thence North 56 degrees 33 minutes 27 seconds West for a distance of 49.50 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase III;

THENCE North 12 degrees 17 minutes 44 seconds West for a distance of 66.68 feet along the center of said Elbo Creek and the East line of said Elbo Creek Phase III;

THENCE North 30 degrees 03 minutes 31 seconds East for a distance of 268.29 feet along the center of said Elbo Creek and the East line of Timber Creek, Phase III and the East line of Timber Creek, Phase IV, in Pottawatomie County, Kansas;

THENCE North 25 degrees 06 minutes 18 seconds East for a distance of 301.85 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE North 55 degrees 17 minutes 42 seconds East for a distance of 80.00 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 69 degrees 52 minutes 53 seconds East for a distance of 45.00 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 04 degrees 44 minutes 26 seconds East for a distance of 85.16 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 52 degrees 42 minutes 25 seconds West for a distance of 63.61 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 00 degrees 26 minutes 13 seconds West for a distance of 39.65 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 37 degrees 43 minutes 44 seconds East for a distance of 35.75 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 57 degrees 39 minutes 48 seconds East for a distance of 61.87 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE North 49 degrees 01 minutes 47 seconds East for a distance of 63.73 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE North 69 degrees 22 minutes 16 seconds East for a distance of 120.21 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE North 14 degrees 47 minutes 35 seconds East for a distance of 109.52 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE North 63 degrees 37 minutes 52 seconds East for a distance of 139.43 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 27 degrees 48 minutes 46 seconds East for a distance of 88.91 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE South 54 degrees 06 minutes 27 seconds East for a distance of 46.78 feet along the center of said Elbo Creek and the East line of said timber Creek, Phase IV;  
 THENCE South 87 degrees 18 minutes 38 seconds East for a distance of 100.94 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE North 29 degrees 43 minutes 38 seconds East for a distance of 61.35 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV;  
 THENCE North 03 degrees 26 minutes 46 seconds West for a distance of 94.17 feet along the center of said Elbo Creek and the East line of said Timber Creek, Phase IV to the Northeast Corner thereof and the North line of the Southeast Quarter of aforesaid Section 3;  
 THENCE South 88 degrees 08 minutes 44 seconds East for a distance of 1186.71 feet along the north line of the southeast Quarter of said Section 3 to the point of beginning.

Said property contains 31.205 acres, more or less

#### TIMBER CREEK II, PHASE VI

A tract of land in the Northeast Quarter (NE ¼) of Section 3, Township 10 South, Range 8 East of the 6<sup>th</sup> P.M., in Pottawatomie County, Kansas, described as follows: Beginning at the Southeast Corner of the Northeast Quarter of said Section 3;

THENCE North 00 degrees 32 minutes 19 seconds East for a distance of 656.19 feet along the East line of the Northeast Quarter of said Section 3 to the center of Elbo Creek;  
 THENCE along the center of said Elbo Creek the following 18 courses:

Course 1, North 73 degrees 00 minutes 49 seconds West for a distance of 56.33 feet;  
 Course 2, South 76 degrees 20 minutes 22 seconds West for a distance of 121.35 feet;  
 Course 3, South 60 degrees 24 minutes 38 seconds West for a distance of 46.61 feet;  
 Course 4, South 35 degrees 03 minutes 35 seconds West for a distance of 86.78 feet;  
 Course 5, South 48 degrees 31 minutes 28 seconds West for a distance of 61.84 feet;  
 Course 6, South 66 degrees 00 minutes 00 seconds West for a distance of 103.21 feet;  
 Course 7, South 30 degrees 20 minutes 42 seconds West for a distance of 56.27 feet;  
 Course 8, South 10 degrees 23 minutes 39 seconds West for a distance of 74.74 feet;  
 Course 9, South 67 degrees 10 minutes 07 seconds West for a distance of 104.67 feet;  
 Course 10, South 80 degrees 00 minutes 51 seconds West for a distance of 55.36 feet;  
 Course 11, North 85 degrees 06 minutes 32 seconds West for a distance of 149.81 feet;  
 Course 12, South 77 degrees 12 minutes 43 seconds West for a distance of 89.14 feet;  
 Course 13, South 54 degrees 46 minutes 13 seconds West for a distance of 160.52 feet;  
 Course 14, South 88 degrees 04 minutes 38 seconds West for a distance of 163.44 feet;  
 Course 15, South 80 degrees 43 minutes 00 seconds West for a distance of 74.80 feet;  
 Course 16, South 48 degrees 24 minutes 02 second West for a distance of 65.10 feet;  
 Course 17, South 08 degrees 35 minutes 55 seconds West for a distance of 39.76 feet;  
 Course 18, South 38 degrees 39 minutes 52 seconds East for a distance of 87.18 feet, to

the South line of the Northeast Quarter of said Section 3; thence South 88 Degrees 42 minutes 22 seconds East for a distance of 1194.51 feet along the South line Of the Northeast Quarter of said Section 3 to the point of beginning

Said Property contains 11.098 , acres, more or less.

Together with and subject to covenants, easements, and restrictions of record.

\*\*\*\*\*

The real property and each lot contained therein, heretofore described, is and shall be held, sold and conveyed subject to the conditions, covenants, restrictions, reservations, and easements as set forth within this declaration- and which shall run with the real property and be binding on all parties having any right, title, or interest in the described real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

This Declaration of Protective Covenants, its restrictions, terms and conditions are assumed, adopted, and agreed upon by the purchasers of any building lot situated in the registered plat of which there covenants are a part of and shall be effective at the time a lot is purchased.

## ARTICLE II GENERAL PURPOSES AND OBJECTIVES

The real property and the purchase of each lot contained therein described in Article I hereof are subject to the conditions, covenants, restrictions, reservations, and easements hereby declared. The objectives of these covenants are to ensure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to prevent the construction of substandard, or unsuitable improvements; to encourage and secure the erection of attractive dwelling thereon; and in general to create and maintain the subdivision in a visually attractive manner and appearance of the mutual benefit and protection of all the owners of lots in the subdivision.

## ARTICLE III DEFINITIONS

As used herein the following words and terms shall have the following meanings:

"Declarant" shall mean and refer to REES Development Company, Inc., its successors, and assigns; REES Development Company, Inc., being the original owner and developer of the land parcel described heretofore as Timber Creek II, Phase III Subdivision, the owner and developer of Timber Creek II, Phase IV Subdivision, and the grantor of building lots contained within said Subdivision.

"Subdivision" or "Properties" shall mean and refer to the land parcels described heretofore as Timber Creek II, Phase III, Timber Creek II, Phase IV, Timber Creek II, Phase V, and Timber Creek II Phase VI Subdivisions in total or in part.

"Lot" shall mean and refer to each parcel of land delineated and numbered on the heretofore described and recorded plats within the Timber Creek II, Phase III, and Timber Creek II, Phases IV, V and VI Subdivisions. Each "Lot" is held and sold or has been held and sold by the Declarant for the exclusive purpose of construction single family residential dwellings (one dwelling residence per Lot) in compliance with the covenants, conditions, restriction, and easements set forth in the Declaration.

"Owner" shall mean and refer to the "owner of record," except as hereinafter set forth, his/her or its successors or assigns, whether one or more persons or entities, of the fee simple title to any Lot which is part of Timber Creek II, Phase III, and Timber Creek II, Phase IV, Timber Creek II, Phase V and Timber Creek II, Phase VI Subdivisions (as well as subsequent development phases). Owners include contract sellers, but exclude those having such interest merely as security for the performance of an obligation. It shall also exclude qualified contractors, as hereinafter defined, from and after the effective date of the Amendment. Such qualified contractor shall be exempt from payment of dues and assessments, during construction phase of a speculative house, for a period not to exceed one (1) year from the date the qualified contractor becomes the record title owner thereof. During such one (1) year period, such qualified contractor shall have no membership or voting rights whatsoever in the Associations, and, if said qualified contractor remains as record title owner after the expiration of one (1) year from the date of recording of the deed by which he/she/they or it acquired title. All rights and requirements herein made of owners within the Subdivision shall thereafter apply.

The "Common Area" shall mean and refer to that plat of land delineated and so designated on the heretofore described and recorded plats within the Timber Creek II, Phase III and Timber Creek II, Phase IV, Phase V and Phase VI (and subsequent development phases) Subdivisions to be owned and maintained by the Timber Creek II, Phase III (and subsequent development phases) Homeowner's Association for the common use and enjoyment of all property Owners. The "Common Area" is to be owned by the Association at the conveyance of the last lot in each respective phase.

The "Association" shall mean and refer to the Timber Creek II, Phase III Homeowner's Association (which shall be the governing Association for the Timber Creek II, Phase III; Timber Creek II, Phase IV, Timber Creek II Phase V and Timber Creek II, Phase VI (and all subsequent development phases) its successors and assigns. The Association shall be a no-profit corporation organized under the laws of the State of Kansas and governed by the Bylaws hereinafter defined, whose major purpose it to manage and maintain common areas, common facilities, community services, post-developmental



architectural control and enforce the covenants, conditions, restrictions, and easements set forth in this Declaration. Any Owner of property within the Subdivisions shall become a member automatically and immediately upon receiving title to any Lot, excepting only qualified contractors, as hereinafter defined, building houses within the Subdivision, who shall be exempt from membership for the construction phase not to exceed one (1) year from the date title is acquired.

"The Architectural Control Committee" shall, during pre-development and development stages of any Lot, consist of Declarant, and during all post-development stages shall mean and refer to a standing committee established by the Association to review and approve improvement plans to be undertaken on any Lot within the Subdivision.

The "Utilities District" shall mean and refer to Timber Creek East Sewer and Water District, a non-profit utilities district, initiated by and under the authority of the Board of County Commissioners of Pottawatomie County, Kansas, established to provide the Subdivision with water and sewer services. The Pottawatomie County Board of County Commissioners has the authority to designate operation and maintenance of the Utilities District and to set and revise rates as necessary.

The "Board of Directors" shall mean and refer to the elected board established by the Association under its Bylaws to execute policies and decisions of the membership, prosecute the Association's objectives and exercise the supervision, control and direction of the Association, and to carry out those other duties and responsibilities as provided for by the Bylaws.

The "Bylaws" of the Association shall mean and refer to the Bylaws duly adopted by the Association, which shall govern such affairs of the Association such as memberships, meetings, voting, directors, officers, and amendments.

"Post-development stage" shall mean that state of development where residential construction on a Subdivision Lot or Lots is complete and the first-time sale of the finished residence thereon is closed and conveyance made thereof to the first-time buyer of said Lot or Lots.

"Pre-development stage" shall mean that state of development of a Subdivision Lot or Lots from date of filing of formal plat to completion of construction of a finished residence thereon and closing and conveyance made to a first-time buyer of said Lot or Lots.

"Subsequent division development stage or phase" shall mean all future development stage or phase of the lands described by General Warranty Deed dated March 8, 1994, and recorded in Book 276 at Page 42 or the records of the Register of Deeds of Pottawatomie County, Kansas, and by Warranty Deed dated March 8, 1994, and recorded in Book 276 at Page 43 of the records of the Register of Deeds of Pottawatomie County, Kansas, and Warranty Deed dated September 28, 2005 and recorded in Book 461 at Page 110 of the records of the Register of Deeds of Pottawatomie County, Kansas.

#### ARTICLE IV RIGHTS OF USAGE

Owners' Easements of Enjoyment. Every Owner shall have a right of use and an easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:

- (a) The Association shall have the right to charge reasonable admission and other fees for the use of any Association owned recreational facility located within the Common Area;
- (b) The Association shall have the right to suspend the voting rights and right-to-use by the Owner such Common Areas and facilities for any period during which any assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) calendar days for any infraction of its published rules and regulations;
- (c) The Association shall have the rights to dedicate or transfer all of any part of the Common Area to any public agency, authority, or utility for scenic or recreational purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument authorized and signed by three-quarter (3/4) or seventy-five percent (75%) of all members agreeing to such dedication or transfer have been recorded.

Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

#### ARTICLE V CREATION OF ASSOCIATION OF HOMEOWNERS

An "association of homeowners" shall be created and named "The Timber Creek II, Phase III Homeowners' Association." The Association shall adopt Bylaws that hereby made a part of these Protective Covenants by reference and are hereby incorporated herein.

#### ARTICLE VI

## ASSOCIATION MEMBERSHIP

Every Owner of a Lot, excepting only qualified contractors (who shall be exempt from membership for a period of one (1) year from date title is of record) shall be a member of the Association. Membership shall be mandatory and irrevocable and may not be separated from ownership of any Lot. Qualified contractors, while exempt, shall have no voting or other membership rights or privileges in the Association, nor shall such qualified contractor be entitled to notification of official meetings of the Association.

Membership in the Association shall provide protective rights and privileges for the Owner but shall also carry out corresponding responsibilities, duties, and liabilities as outlined in these covenants and shall otherwise be lawfully imposed by the Association.

The Association shall have two classes of voting membership:

Class A. The Class A members shall be all Owners with the exception of Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for 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.

Class B. The Class B member(s) shall be Declarant who shall be entitled to four (4) votes for each Lot owned, both recorded and proposed, per Timber Creek II, Phase III and Timber Creek II, Phase IV Final Plats and any subsequent Subdivision development phases thereof (as herein defined). Upon the sale of all Lots in Phases III, IV, and any subsequent development phases, by Declarant, Class B membership shall cease.

## ARTICLE VII ASSOCIATION RESPONSIBILITIES

The Association will assume but is not limited to the following basic responsibilities and provide the following common services required within the Subdivision for the general use and benefit of all Lot Owners:

- (1) General lawn and plant material maintenance in all Common Areas, necessary to insure a good visual appearance throughout the Subdivision.
- (2) General maintenance and upkeep of common community facilities including recreation facilities, structures, lighting, play areas, path systems, etc., if the membership so elects to construct such facilities.
- (3) Enforcement of conditions, covenants, restrictions, reservations, and easements as set forth within the Declaration and Association directives and procedures may be determined by the membership and/or Board of Directors.
- (4) Architectural Control Committee shall review and approve all construction plans including but not limited to structural consideration, architectural treatment, and major landscape improvements as set forth within the Declaration by the Architectural Control Committee.
- (5) Keep Association records, policies, financial records, collect and disperse funds, notify membership as necessary, employ staff, and other managerial responsibilities incidental and necessary to Association operations.
- (6) The Association shall establish reasonable directives, rules, and regulations as are determined to be necessary and appropriate to carry out and enforce the objectives of the Association and the Protective Covenants by reference and are hereby incorporated therein.
- (7) The Association Board of Directors will set a time and location for an annual meeting, and provide a minimum of ten (10) days notice for said meeting to all members.

## ARTICLE VIII ASSOCIATION ASSESSMENTS

Purposes. Assessments levied by the Association shall be used exclusively for the improvement and maintenance of the Common Areas and facilities within the Subdivision and to promote the general recreation, health and safety, and welfare of the Owners.

Obligations and Lien. The Owner of any Lot (except qualified contractors constructing houses within the Subdivision for the speculative housing market, during their first year of record ownership), by acceptance of a deed therefore, whether or not is shall be so expressed in such a deed, is obligated and agrees to pay the Association (a) annual assessments or chares, and (b) special assessments made under such terms and conditions as are herein provided. The annual and special assessments together with interest, costs, and reasonable attorneys fees shall be a charge on the Owner's land and shall be a continuing lien upon the property against which each such assessment is made until paid. Each assessment, associated expense, and obligation shall pass with the land to successor Owner in title. Further, no sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall, upon request, and for a reasonable charge, furnish a certificate signed by the treasurer of the Association setting forth the assessments owned to date on the specified Lot.

Delinquent Obligations. A 10% penalty shall be imposed on the outstanding balance of annual or special assessments when the obligation is three (3) months delinquent. The Association may bring an action at law against the Owner personally obligated to pay the assessment, or foreclose the lien against the

property. No Owner may waive or otherwise avoid liability for the assessments provided for herein by no use of the Common Area or abandonment of his Lot.

Collections. Both annual and special assessments must be fixed at a uniform rate for all Lots and shall be collected in advance on a monthly, quarterly, or annual basis. The annual assessment period shall run from January 1 to December 31 each calendar year. The treasurer shall immediately notify each Owner in writing of any increase in the annual assessment. Unsold Lots owned by the Declarant shall not be subject to annual assessment; however, the Declarant shall maintain all unsold Lots. It is further understood the Declarant shall maintain Common Areas until such time as the Association can financially assume such responsibilities.

Maximum Assessments. The maximum annual assessment of an Owner until January 1, 1997 shall not be in excess of one hundred twenty dollars and no cents (\$120.00) per Lot, or ten dollars and no cents (\$10.00) per month for such ordinary expenditures as maintenance of Common Areas and facilities, supervision and management, and similar expenses and services as authorized by the membership and/or the Board of Directors. After January 1, 1997, the annual assessment (dues) shall not be increased by more than seven percent (7%) of the previous year's assessment for any calendar year unless by a two-thirds (2/3) vote of those Owners present or by proxy at the annual meeting of the Association, or at a special meeting of the Association.

Special Assessments. Special annual assessments may be authorized and levied as special dues, for the purpose of defraying in whole or in part, the cost of any new construction reconstruction, repair, maintenance, or the replacement of capital improvement. Special assessments shall be only authorized by a two-thirds (2/3) vote of those owners present or by proxy, at the annual meeting of the Association, or a Special Meeting of the Association.

Increases. The Board of Directors shall give written notice to all Owners and members of any meeting called for the purpose of considering or acting upon a proposal to increase the annual assessment in excess of seven percent (7%) of the previous year's assessment, or to consider or act upon a proposal for a special assessment. The notice shall be mailed to all members not less than ten (10) calendar days in advance of the meeting, and shall specify the time, date, and place of the meeting, the nature of the increase in the assessment and the reason(s) therefore. The Board of Directors is authorized to increase an annual assessment after January 1, 1997 by seven percent (7%) of the previous year's assessment or less per annum; but, shall first give reasonable notice of its intention to do so to all members and shall hold a hearing to provide Owners and members an opportunity to express themselves on the subject. Increase in the annual assessment in excess of seven percent (7%) of the previous year's assessment or of a special assessment shall be approved by a two-thirds (2/3) vote of the Owners present in person or by proxy, at the annual meeting of the Association or a special meeting of the Association. No assessment shall be levied or authorized before the calendar year in which the assessment is authorized. Two-thirds (2/3) of the Board of Directors shall concur with any proposal for either a special assessment or an increase of the annual assessment in excess of seven percent (7%) of the previous calendar year's assessment before the proposal is submitted to the Association membership for its action.

## ARTICLE IX UTILITY DISTRICT FORMATION AND RATES

The Pottawatomie County Board of Commissioners has formed a utility district to provide the Subdivision with water and sewer service; and, under Timber Creek East Sewer and Water District authority will retain a qualified and certified agent to operate and maintain the utility facilities. Timber Creek East Sewer and Water District will retain ownership of all sewer and water facilities.

Utility fees for streetlights shall be included in Association dues.

## ARTICLE X ARCHITECTURAL CONTROL COMMITTEE

During all pre-development and development stages of Timber Creek II, Phase III, IV, V and VI and any subsequent subdivision development phases, the Architectural Control Committee, shall consist solely of Declarant. Thereafter, architectural control shall be vested in a standing committee established by the Association for purposes of consideration and preservation of natural amenities, which shall be major planning objectives in the development of Timber Creek II, Phase III, Phase IV, Phase V and Phase VI and all subsequent subdivision development phases. The items outlined herein are not intended to be unduly restrictive or inflexible, but rather to be used a minimum standard by both the pre-development and development committees, as well as the post-development committee, to attain and maintain a desirable level of consistency and quality in the community appearance, and generally maintain property values throughout the Subdivision.

The Association shall have a standing committee to be named the Architectural Control Committee, consisting of not less than (3) nor more than five (5) members, to be appointed by the Association Board of Directors to review and implement the requirements of this section throughout all post-development stages of any Lot.

Plans Approval. No building, structure, or improvement including but no limited to basement excavation, grading, wall, fences, landscaping, etc. shall be commenced, constructed, or maintained on any Lot, nor shall any exterior addition, change or alteration thereto be made until proposed improvement plans

have been submitted and approved in writing by the Architectural Control Committee. Generally, improvement plans will include but not be limited to:

- (1) A site plan indicating property lines, location of proposed structure and/or site improvements.
- (2) A floor plan(s), indicating wall lines, room use, window and door locations, and overall structure dimension.
- (3) Exterior, street facing elevation indicating architectural treatment, roofline, window and door openings, exterior materials and colors, and proposed ground line.
- (4) The beginning and finish date for the project.

All improvements shall be constructed and maintained in accordance with approved plans. The Architectural Control Committee shall use its discretion and reasonable judgment in evaluating and passing upon all such plans and shall be liable to any person for its actions in connection with submitted plans and specifications. Failure to submit plans for approval before construction and deviation from approved plans during construction will result in the removal, takedown, and/or reconstruction in accordance with the provisions of Article XIII.

The Architectural Control Committee shall act upon the plans and specifications submitted within seven (7) working days after receipt of all first time construction and within thirty (30) calendar days for homeowner revisions and additions. If the Committee takes no action within the specified periods, the plans shall be deemed approved. Should the committee reject a plan or request changes and the plans are resubmitted, the Committee shall have ten (10) working days upon which to act on the resubmitted plans.

The Architectural Control Committee will make every effort to decrease the time limitations prescribed herein if requested. Approval of plans requires a two-thirds (2/3) affirmative vote of the membership of the Architectural Control Committee.

Other Requirements. Approval of plans by the Association in no way waives or abates compliance with approvals, permits, codes, or resolutions which may be required by Pottawatomie County, now or in the future.

Fences. Any other provision thereof notwithstanding, and regardless of when constructed, fences are to be considered part of a post-construction stage and require formal approval by the Association's Architectural Control Committee. Fences shall be limited to forty-eight inches (48") in Height. Fences must attach to the side of the house no closer to the front of the house than one-half (1/2) the depth of the house. Fences surrounding swimming pools may exceed the above height restriction if required by an insurance carrier and with the approval of the Architectural Control Committee. Fences shall be constructed in a professional manner, using either wood or vinyl material, with finished side out and post and rails inward. The Owner of the property upon which the fence is constructed shall be responsible for ensuring the grass and weed growth on each side of the fence is properly controlled. All fences, including wood fences, shall be maintained and kept in acceptable condition by treating, staining, or painting.

## ARTICLE XI BUILDING RESTRICTIONS

Land Use and Building Type. No Lot shall be used nor building erected for purposes other than a single-family residential dwelling. No modular, offsite manufactured home, or mobile home shall be permitted. Home occupation/business shall be allowed if permitted by county zoning regulations and approved by two-thirds (2/3) or sixty-six percent (66%) affirmative vote of the Board of Directors.

Outbuildings. Outbuilding may be permitted within the discretion and reasonable judgment of the Architectural Control Committee by taking into consideration factors, including but not limited to, the configuration of the lot in question, the size of the principle dwelling on the lot, the planned use of the building, all adjoining lots and dwellings as well as the submitted plan for the proposed outbuilding. The Architectural Control Committee shall not approve plans for an outbuilding, which exceed the following specifications without approval of the Board of Directors and the Homeowners Association at its Annual Meeting. If a homeowner wishes to appeal the decision of the Architectural Control Committee, the appeal would need to be heard by the Board of Directors and the Homeowners Association. The specifications are as follows; (1) Construction materials must match in quality and appearance to the home on the same lot; (2) Maximum wall height of eight feet (8') with a roof pitch to match the home on the same lot; (3) Maximum square footage of 120 sq. ft., (10' x 12'); (4) Concrete slab floor, which must be the same size as the footprint of the shed; (5) Utility services are allowed but must be buried. Only one such building will be allowed per Lot.

Approval of Construction Plans. No structure or major improvement shall be commenced or maintained until: (1) approved compliance with provisions specified herein under "Architectural Control Committee," and (2) necessary permits have been issued by Pottawatomie County.

Exterior Materials and Colors. Exterior surfaces should be of natural appearing materials and colors that blend and are compatible with the natural landscape and adjacent homes. Earth-tone colors are recommended. Metal exterior surfaces shall be disallowed. No vinyl siding shall be allowed.

Setback Requirements. All structures shall maintain a minimum front setback distance of twenty-five (25) feet to the eave line from the street Right-of-Way (ROW)/property line and a minimum of eight

(8) feet to the nearest structure wall line from all other property lines. A variety in setback distances and first floor elevation from Lot to Lot is encouraged.

Minimum Floor Area/Building Height. All dwelling structures within the Subdivision shall have the minimum square footage as follows: All single-level ranch homes will have a minimum of fourteen hundred (1400) square feet. All one and one-half (1 ½) or two (2) story homes will have a minimum of one thousand fifty (1050) square feet on the main floor exclusive of garage, basement, porches, and decks. The maximum height of any dwelling structure shall be two (2) stories.

Home Foundations. For new construction, from the date of this Second Amended Declaration of Protective Covenants, no building plans without the inclusion of a basement foundation shall be approved.

Garage and On-Site Parking Requirements. Each dwelling structure shall include at minimum a one (1) car, attached garage and two (2) exterior on-site parking spaces of two hundred (200) square feet per parking space included within the driveway area. All on-site parking spaces shall be located entirely within Lot property boundaries.

Outside Antenna. No antennas shall be allowed except for satellite dishes as hereafter described. Satellite dishes not to exceed 36" in diameter may be allowed by the Architectural Control Committee.

Construction Time Limitations. The major intent in the conveyance and selling of Lots within the Subdivision is to encourage the construction of single-family dwelling units thereon. No Lot shall be purchased and held in a vacant condition beyond two (2) years without annual, written approval of the Board of Directors. All construction improvements, alterations, etc., commenced shall be pursued diligently to completion within nine (9) months of the starting date. A vacant Lot will in no way exempt the Lot Owner from Association assessments or minimum utility charges or maintenance obligations to ensure visual quality of the Subdivision from the day of conveyance. The Board of Directors may assess and levy a reasonable charge against the Owner for failure to comply with the requirements of this paragraph with the concurrence of two-thirds (2/3) or sixty-six percent (66%) of the members of the Board of Directors.

Landscaping. All ground surfaces disturbed by construction activities shall be promptly graded and seeded to insure positive drainage, to conform and blend with the existing ground surface and limit soil erosion. All Lots shall be landscaped, including lawn seeding and plant material installation, within twelve (12) months of dwelling occupancy. All initial lawn seeding and plant material installation shall be completed in season by experienced, qualified nurserymen. All lawns containing a dwelling structure shall be well maintained with weed control and mowing such that grass height does not exceed six inches (6") in height.

Clothesline  
No outside clotheslines shall be allowed.

Underground Utilities. All utilities shall be underground including, but not limited to electric, telephone, and cable television conductor lines. No overhead wiring or supporting poles of any kind shall be allowed, except for emergency alert systems.

Construction Quality. All construction shall meet current standards set forth in (1) the national uniform building code by the International Conference of Building Officials with modifications as determined by the Architectural Control Committee, and (2) building codes and regulations set forth by Pottawatomie County, Kansas.

Trash and debris shall be removed from each construction site on a regular basis. Lightweight material, packaging, and other items shall be weighted down to prevent the wind from blowing such materials off the construction site. Mud and debris resulting from activity on the construction site shall be promptly removed from adjoining Lots, Public roads, and common open space. Every effort shall be made to preserve topsoil during construction activities and redistribute topsoil over disturbed ground surface areas at the conclusion of grading activities.

Waiver of Building Restrictions. The intent of the foregoing building restrictions are set forth as standards to encourage quality construction and quality visual appearance throughout the Subdivision. Upon application, the Architectural Control Committee or the Board of Directors may waive any of the included restrictions or conditions on a case-by-case basis if such revisions or variances are determined to be with good cause and/or in the best interest of the Subdivision.

## ARTICLE XII GENERAL COVENANTS AND RESTRICTIONS

Driveway Parking. No wrecked, decrepit, unserviceable, or unused vehicles shall be parked on driveways or lawn areas; nor shall said driveway or lawn area be used to make major repairs on automobiles or other vehicles. The parking of trucks above the one-ton (1) category or construction equipment in driveways or on streets on a continuing basis shall be prohibited.

Street Parking. Permanent parking shall be prohibited. Temporary parking shall be allowed on public streets and shall be limited to the homeowner for the accommodation of visitors or any other legitimate reason which does not allow for use of homeowner's garage or driveway areas for parking. In no event shall temporary parking exceed five (5) consecutive days of fifteen (15) calendar days in any month.



No temporary street parking shall be allowed during a snowfall or within twenty-four (24) hours after a snowfall in excess of one inch (1").

Household Pets. Owners may keep normal household pets provided they do not constitute a nuisance, a danger, or visual distraction to adjoining Lot Owners or the Subdivision as a whole. Unattended pets shall not be allowed beyond the Owner's property. Outside pens, kennels, or structures for the keeping of pets shall be architecturally compatible and immediately attached to the dwelling structure, shall have a non-permeable floor surface such as a concrete or asphalt, and shall be completely screened from the view of adjacent neighbors. The Architectural Control Committee shall approve of all construction of outside enclosures for household pets. Household pets, in terms of noise, odor, and view should be the problem of the Owner rather than adjacent neighbors.

Gardens. Garden plots are allowed and encouraged; however, garden plots shall not be permitted in the front lawn area. Garden plots are defined generally as plots for the raising of vegetables and do not include flower borders, landscape planting beds, or minor landscape improvements.

Trash Storage. Trash shall be stored in metal or plastic, leak-proof, airtight containers. Trash containers shall be stored within the garage or an enclosed, screened area immediately attached to the dwelling structure and available for removal on designated pick-up days. Burning of trash, grass weeds, etc. is prohibited.

Easements. Owners grant agents and employees of the Association, the Sewer and Water Utility District authority, and various utility companies serving the Subdivision including but not limited to KPL, Southwestern Bell Telephone Company, and any future named cable television company an easement and access across their Lot, exclusive of dwelling area and as indicated on the plat, for the installation, repair, and maintenance of utilities, drainage, reading of meters, trash pick-up, and exterior upkeep of dilapidated, unkempt properties and improvement thereon. The Owner also grants the Sewer and Water Utility District Authority access, on an annual basis, to the water meter located within the dwelling structure to verify the exterior remote readout meter reading.

Signs. No signs of any kind shall be displayed on any Lot or Common Area except temporary signs, five (5) feet or less in area, advertising property for sale or rent.

Nuisance Activities/Firearms. No noxious or offensive activity shall be carried on within the Subdivision, which will constitute a public nuisance. No property shall be used as a dumping ground for refuse, trash, garbage, debris, or other waste with all properties to be maintained in a sanitary condition. Outdoor burning of any kind shall be prohibited within the Subdivision unless approved by the Association. No firearms shall be discharged within the Subdivision.

### ARTICLE XIII GENERAL PROVISIONS

Violation of Covenants. Whenever an act or omission, an improvement or condition is determined by the Board of Directors to be in violation of the covenants or restrictions herein, the Board of Directors shall give written notice of the violation of these Protective Covenants or of any rule, regulation, or directive enforceable under the covenants to the Owner who is in violation specifying the nature of the violation and the remedy necessary to correct the violation. If corrective action is not taken and completed by the Owner within a reasonable time, the Board of Directors or its agent may enter upon the Owner's property and do whatever is necessary and proper to correct the violation at the Owner's expenses. Costs and expenses necessary to correct violations shall become a debt of the Owner to the Association and may become a lien (in accordance with K.S.A. 60-1101) upon the Lot of the Owner, enforceable as lien upon recordation of the debt and lien in accordance with Kansas Lien Law. The Board of Directors may promulgate rules and procedures to fairly and reasonably process and handle violators and violations.

Enforcement. The Board of Directors shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now and hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Severability. Invalidation of any one of these covenants or restrictions by judgment or Court Order shall in no way invalidate any other provision which shall remain in full force and effect.

Terms of Covenants. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless terminated or otherwise amended as provided herein.

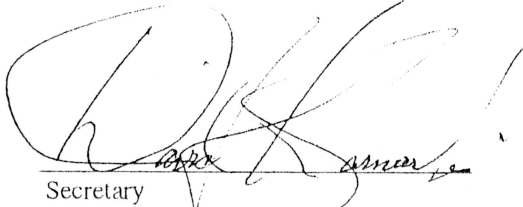
Amendment. The Declaration may be changed, amended, or terminated by the Declarant until the last Lot of all development phases of Timber Creek II Subdivision (including Phases III, IV, and subsequent subdivision development phases) for sale is conveyed or by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners including the total aggregate of both Class A and Class B membership. An amendment must be filed and recorded at the office of the Register of Deeds of Pottawatomie County, Kansas, to be in force.

Annexation. Additional property and Common Area may be annexed to the Subdivision by the Declarant until the last Lot of all subdivision development phases is sold. Any annexation must be filed and recorded at the Office of the Register of Deeds of Pottawatomie County, Kansas, to be in force. It is understood that the Declarant shall be allowed to include subsequent subdivision development phases to coverage under the Protective Covenants.

Township, County, and State Regulations. Where township, county, or state regulations, codes, ordinances, or laws are applicable or more restrictive than these covenants and restrictions, they shall supersede the provisions herein.

Grandfather Clause. Building and Lot restrictions as enacted in the in the Second, Third, Fourth, and Fifth Amended Declarations of Protective Covenants for Timber Creek II, Phase II, Phase III, Phase IV, Phase V and Phase VI Plats of Pottawatomie County, Kansas, shall apply prospectively from the date of filing of the said amended declarations with the Register of Deeds of Pottawatomie County, Kansas.

IN WITNESS WHEREOF, REES Development Company, Inc., the Declarant herein, has caused its corporate seal to be hereto affixed and attested by its President and Secretary, this 20<sup>th</sup> day of June, 2006.

  
Secretary

REES Development Company, Inc.

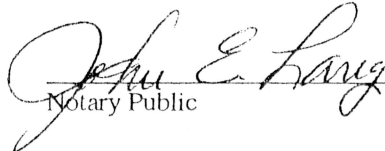
By:   
President

STATE OF KANSAS, POTTAWATOMIE COUNTY, ss:

BE IT REMEMBERED that on this 20<sup>th</sup> day of June, 2006, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came JOHN L. EICHMAN as President of said corporation, duly acknowledged the execution of the same to be the act of the corporation; and DAVID KARNOWSKI, as Secretary of said corporation duly acknowledged the execution of the same for and on behalf of said corporation.

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

My appointment expires: 11-08-09

  
Notary Public

