

# TABLE OF CONTENTS

	Page Number
Foreword .....	i
Homes Association Declaration .....	1
Recitals .....	1
Article I—Definitions .....	2
Article II—Description of Units and Buildings, Number of Units, Description of Common Area and Percentage Interest in the Common Area .....	3
Article III—Anticipated Annexation of Additional Property: Other Annexation .....	4
Article IV—Property Rights .....	6
Article V—Members and Their Voting Rights .....	7
Article VI—Covenant for Assessments: Lien for Assessments .....	8
Article VII—Maintenance .....	10
Article VIII—Grants and Reservations of Easements .....	11
Article IX—Use Restrictions .....	12
Article X—Architectural Control .....	15
Article XI—Party Walls .....	15
Article XII—Insurance .....	16
Article XIII—Destruction, Damage or Obsolescence .....	17
Article XIV—General Provisions .....	18
Exhibit A (To Homes Association Declaration) .....	21
Articles of Incorporation of The Villages of Overland View Homes Association, Inc. ....	22
Exhibit A (To Articles of Incorporation).....	27
Bylaws of The Villages of Overland View Homes Association, Inc. ....	29

**THE VILLAGES OF OVERLAND VIEW  
HOMES ASSOCIATION DECLARATION  
(AND IMPOSING COVENANTS, CONDITIONS AND RESTRICTIONS)**

THIS DECLARATION is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ for the purposes of submitting certain real property hereinafter described and improvements constructed thereon to the provisions hereof.

**RECITALS**

SECTION 1. *Identification of Declarant.* ARTISAN DEVELOPMENT DIVISION OF KAISER AETNA, a California general partnership with its principal office in Oakland, California, is the legal entity which is creating and imposing this Homes Association Declaration and placing upon said real property and improvements thereon the Covenants, Conditions and Restrictions described herein-after; and said partnership is hereinafter sometimes referred to as the Declarant.

SECTION 2. *Ownership of Fee Simple Title.* The Declarant is the owner of all of the real property herein subjected to this Homes Association Declaration at the time this Declaration is executed and filed for record.

SECTION 3. *Legal Description of Real Estate.* The legal description of the real property subject to this Declaration is as follows:

All of block 1 of Overland View—Village One, a subdivision of land in the City of Overland Park, Johnson County, Kansas, as shown on the record plat thereof, except the following described tract of land:

All that part of the Southwest Quarter (SW ¼) of Section 7, Township 13, Range 25, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Commencing at a point on the West line of the SW ¼ of said Section 7 and 1485.91 feet South from the Northwest corner thereof; thence N 90° E, along a line at right angles to the West line of the SW ¼ of said Section 7, a distance of 55.00 feet; thence S 69° 02' 39" E, a distance of 173.81 feet; thence N 88° 07' 20" E, a distance of 199.12 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the left 73° 37' 08" from the last described course, having a radius of 324.00 feet, a distance of 156.26 feet, to the point of beginning of a tract of land to be herein described; thence continuing Northeasterly along the last described curve, a distance of 80.48 feet; thence N 56° 22' 02" E, a distance of 209.62 feet; thence Northeasterly along a curve to the right from the last described course as a tangent, having a radius of 524.00 feet, a distance of 117.12 feet; thence S 0° E along a line which deflects to the right 110° 49' 36" from the tangent to the last described curve at the last described point, a distance of 221.98 feet; thence N 90° W, a distance of 339.27 feet to the point of beginning.

The above described tract containing 1.01 acres, more or less.

SECTION 4. *Name of Homes Association.* The name by which this Homes Association shall be known is The Villages of Overland View Homes Association, Inc.

SECTION 5. *Purposes of Declarant.* The purposes of the Declarant are as follows: to offer residential units for sale, and to provide for the preservation and maintenance of the physical and value aspects of the units and the common areas as defined herein; to provide for the sale of merchantable title to the individual units; to promote the benefit and well being of the Owners of and residents upon said real estate, and to provide for their enjoyment of ownership and occupancy. To accomplish the aforesaid purposes, the Declarant desires to subject the real estate described herein to the following Homes Association Declaration and to the covenants, conditions and restrictions set forth therein.

SECTION 6. *Restrictions Upon Use.* The restrictions upon the use or uses of the real estate and the units situated thereon are set forth throughout this Declaration, particularly in Article IX hereof.

SECTION 7. *Not a Subdivision.* The conveyance or transfer of ownership of any units subject to this Declaration, shall not constitute a subdivision within the meaning of the Kansas Statutes which deal with the subdivision and platting of real estate.

## ARTICLE I. DEFINITIONS

As used in this Declaration or in any amendment to it the following words shall have the meaning set forth below; and, except as specifically provided herein, this Declaration shall be interpreted according to the definitions set forth in this Article.

SECTION 1. *"Association"* shall mean, refer to and include the organization of all the Owners of units located on the property described in Section 3, Recitals hereof, acting as a group, which organization administers the property in accordance with the Association's Articles of Incorporation, By-Laws and this Declaration. This Association shall mean the following named association: The Villages of Overland View Homes Association, Inc., its successors and assigns, a Kansas not for profit corporation.

SECTION 2. *"Common Area"* shall be defined as follows: such "common area" shall mean, refer to and include all of that portion of the property which is delineated, depicted graphically and identified as "Common Area" on any survey or surveys of the property described in Section 3, Recitals herein filed of record in the Register of Deeds Office of Johnson County, Kansas. Stated in reverse, the Common Area constitutes that part of the property which is *not* within the areas delineated, depicted graphically and identified as units, or dedicated areas on the plat of said property or the surveys previously referred to herein.

SECTION 3. *"Declaration"* shall mean, refer to and include this instrument and any and all amendments thereto.

SECTION 4. *"Dedicated Street Rights of Way"* shall mean, refer to and include that portion of the property which is delineated, depicted graphically and identified on the plat previously referred to herein as being dedicated public street rights of way, and by the execution, acceptance and recording of this Declaration and the Plat of said streets.

SECTION 5. *"Limited Common Areas"* shall mean those parts of common areas reserved for the use of a certain unit to the exclusion of all other units as more specifically described Article IV, Section 1.

SECTION 6. *"Owner"* shall mean, the persons, natural or artificial owning the fee simple estate in a unit, and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in this Declaration, but excluding those holding record title or a similar interest merely as security for the performance of an obligation.

SECTION 7. "*Property*" or "*Properties*" shall mean the land described in Section 3 of the "*Recitals*" herein, all improvements and structures thereon, all owned in fee simple absolute and all easements, rights and appurtenances belonging thereto, and all fixtures and personal property attached to said improvements and structures and intended for use in connection therewith.

SECTION 8. "*Public Utility Easements*" shall mean, refer to and include that part of the property which is delineated, depicted graphically and identified on the plat previously referred to herein as being such easements and by the execution, acceptance and recording of the Plat the Declarant hereby grants easements over such areas for the purpose of "*Public Utility Easements*". Such term "*Public Utility Easements*" shall also mean, refer to and include that part of the property granted at any time subsequent to the date of the Plat previously referred to herein for public utility lines. The underlying fee ownership beneath such easements shall constitute common area or the area of various units, as the case may be, depending upon the precise location of such public utility easements.

SECTION 9. "*Units*" shall mean, refer to and include a part of the property as previously defined herein consisting of one or more rooms on one or more floors of a building or buildings, together with fee simple title to the land immediately beneath, and designated as a unit in the Declaration. Accordingly, such a "*unit*" shall mean, refer to and include that part of the property, together with all improvements now or hereafter constructed or placed thereon, within the boundary lines of the areas designated as such units on the survey or surveys previously referred to herein. Each unit shall be designated with a consecutive number as a unit and the survey or surveys previously referred to herein shall show the location of each such unit and show the immediate Common Area or Limited Common area (if any) to which each unit has access. Said survey or surveys shall further show that each such unit has a direct exit to a public street or highway or to a common area leading to such a public street or highway.

## **ARTICLE II. DESCRIPTION OF UNITS AND BUILDINGS, NUMBER OF UNITS, DESCRIPTION OF COMMON AREA: PERCENTAGE INTEREST IN THE COMMON AREA**

SECTION 1. *Description of Units.* The description of the various units to be located on the property described in Section 3, Recitals hereof is in part contained in the definition of "*unit*" which is set forth in earlier parts of this Declaration. Each unit, together with its undivided interest in the common area, shall for all purposes constitute real property and shall be deemed real estate within the meaning of all provisions of the Kansas Statutes. Each unit Owner is entitled to the exclusive fee simple ownership and possession of his unit which includes fee simple ownership of the land on which the unit is built and also includes ownership of an undivided interest in the common area in such a percentage as is expressed in the Declaration. The boundaries of a unit shall extend to the center of all party walls (there being no party floors or party ceilings), and shall include the interior and exterior of all walls, floors and ceilings which are not shared with other units, and other areas within the boundaries of the unit and shall always include fee simple title to the real estate immediately beneath the unit. Ownership of a unit shall include the right to exclusive possession, the use and enjoyment of surfaces of all its perimeter walls, floors and ceilings and of all supporting walls, fixtures and other parts of the buildings within the boundaries of said unit, including the right to paint, tile, wax, paper or otherwise finish, refinish or decorate the interior surfaces only of the same. In any deed, mortgage, lease or other instrument of conveyance or encumbrance of, or by which a lien is created upon, any interest or estate in a unit or units located on the property described heretofore in Section 3, Recitals it is sufficient to describe the land on which any such unit is located, the number of the unit, the numbers of the Book and initial pages of the records of the Office of the Register of Deeds of Johnson County, Kansas where this declaration is recorded. Each unit and its percentage of its undivided interest in the common area, as expressed subsequently in this Declaration, shall be deemed to be a separate parcel for all purposes of taxation and assessment of real property, and no other unit or part of the property described in Section 3, Recitals hereof shall be charged with the payment of such taxes and assessments. At the time of the first conveyance of each



unit, every mortgage and other lien affecting such unit, shall be paid and satisfied of record, or the unit being conveyed shall be released therefrom by partial release duly recorded.

**SECTION 2. *Description of Common Area.*** A description of the common area is in part contained in the definition of "common area" which is set forth in earlier parts of this Declaration. The common area shall be owned by the unit Owners as tenants in common, and ownership thereof shall remain undivided. No action for partition of any part of the common area shall be maintainable, except as specifically provided in this Declaration, nor may any Owner waive or release any rights in the common area. Each Owner is entitled to ownership of an undivided interest in the common area in such percentage as is expressed below in this Declaration. Further, the undivided interest in the common area shall not be separated from the unit to which it appertains and shall be deemed to be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the deed, mortgage, lease or other instrument of conveyance or encumbrance.

**SECTION 3. *Percentage Interest in the Common Area.*** The percentage of interest owned and held in the Common Area by the Owner of each unit shall be determined in the following manner:

(a) Each three (3) bedroom unit, types 2, 4 and 5 as shown on the plans of Declarant shall have a 1.150% interest in the common area.

(b) Each two (2) bedroom unit, types 1, 3, 6 and 7, as shown on the plans of Declarant shall have a 0.915% interest in the common area.

In the event of annexation of additional land as set forth under the terms of Article III hereof, the percentage of interest owned and held in the common area by the owner of each unit as set forth above shall remain constant and shall not change.

#### **ARTICLE III. ANTICIPATED ANNEXATION OF ADDITIONAL PROPERTY: OTHER ANNEXATION**

**SECTION 1. *Anticipated Annexation of Additional Property.*** It is anticipated by the Declarant that additional property will be annexed to the real estate described in Section 3, Recitals. It is also anticipated that such additional land, together with the original Property, will be part of a planned development consisting of approximately 320 units of similar quality and design to the units on the original property, and will be developed in a number of sections or phases. The additional real estate which is planned to be annexed to the initial stage of this development is adjacent to and contiguous with the real estate described herein, is also situated in Johnson County, Kansas, and is legally described on Exhibit "A" attached hereto and made a part hereof. There is no manner in which the Declarant can foretell the future in such a way as to be able to guarantee that this other real estate will be annexed, and accordingly there is no commitment, undertaking or promise by the Declarant to annex said additional area of real estate. Such additional real estate may be annexed without taking a vote of the members at the time of such annexation. Each owner by the acceptance of a deed for an interest in a unit, whether or not it shall be so expressed in such deed, is deemed to covenant that such owner irrevocably consents to and approves any amendments to this Declaration necessary or appropriate to annex any part or all of said additional real estate referred to above, which amendments may provide for additional units on such annexed land so as to increase the total of units, and will therefore increase the number of units sharing the common area. In the event that amendment of the Association's Articles of Incorporation or By-Laws would be necessary or appropriate in connection with such an annexation amendment, the above-described consent and approval of each owner shall be deemed to cover and apply to such amendments of those other instruments and such consent and approval shall also be deemed to cover and apply to the easements for ingress and egress to the common areas located on Section 3, Recitals as described in the next paragraph herein.

In the event that additional land is annexed in accordance with the terms of this Article III the

Owners of the units described in Section 3, Recitals shall be granted necessary easements for ingress and egress to the common areas located on such annexed land and the owners of the units described in Section 3, Recitals shall in return grant easements for ingress and egress to the common areas located on the land described in Section 3, Recitals to the owners of the units to be located in the annexed area. The intent of this paragraph is to grant to the owners of the units described in Section 3, Recitals the use and enjoyment of the common areas and facilities located on the annexed land and in return to grant to the owners of the units located on the annexed land the use and enjoyment of the common areas and facilities located on the land described in Section 3, Recitals without requiring a change in the percentage ownership in the common areas located on the land described in Section 3, Recitals as set forth herein under Article II, Section 3, hereof.

Each unit Owner and their respective mortgagees by acceptance of a deed conveying an Ownership Interest or a mortgage encumbering such Ownership Interest, as the case may be, hereby irrevocably appoints Declarant his Attorney in Fact, coupled with an irrevocable interest and authorizes, directs and empowers such Attorney, at the option of the Attorney in the event that Declarant exercises the option and the rights reserved in this Article III to add the land described herein and the improvements constructed thereon to the property as herein provided, to execute, acknowledge and record for and in the name of such unit Owner the required easements and an amendment or amendments of this Declaration for such purpose and for and in the name of such respective mortgagees, a consent to such easements and amendment or amendments.

A community building and related recreational facilities shall be constructed by the Declarant during the construction of the units described in Section 3, Recitals on a portion of the real estate anticipated to be annexed and described in this Section 1. The community building will be for the benefit of the Owners of the units described in Section 3, Recitals hereof and for the benefit of the Owners of the units to be located in the annexed area if said area is annexed as anticipated. In the event that the units constructed on any portion of the area anticipated to be annexed as described in this Section 1 are not individually owned, the community building shall be for the benefit of the Owners of the units described in Section 3, Recitals hereof, owners of units in any annexed area and for the benefit of the adjoining residents referred to above. In the event the community building is annexed in the manner described herein and the use thereof is shared with said adjacent residents the cost of operation and maintenance of the community building shall be shared pro rata with said adjacent residents and if necessary easements for ingress and egress to said community building shall be granted to said adjacent residents. In the event said community building is not annexed as anticipated herein easements for ingress and egress to said community building shall be granted to the Owners of units located in the area described in Section 3, Recitals hereof and to owners of units in any annexed area and the Owners of said units shall pay only their pro rata share of the cost of operation and maintenance of the community building.

**SECTION 2. *Other Annexation.*** It is not anticipated or expected by the Declarant that additional property, other than that described in the previous portions of this Article, will be annexed. In the event such annexation of other land is desired, however, the following procedures shall be followed. The affirmative vote, approval or consent of at least three-fourths of the voting power of each class of members of the Association shall be required to effect such an annexation. Each Owner by the acceptance of a deed for an interest in a unit, whether or not it shall be so expressed in such deed, is deemed to covenant that such owner irrevocably consents to and approves any such amendments to this Declaration which annex such land and which have been approved by said three-fourths vote, which amendments may provide for additional units on such annexed land and will therefore increase the number of units sharing in the use of the common area. In the event that amendment of the Association's Articles of Incorporation or Bylaws would be necessary or appropriate in connection with such an annexation amendment, the above-described consent and approval of each Owner shall be deemed to cover and apply to such amendments of those other instruments. This covenant to consent and approve is conditioned upon the three-fourths vote, approval or consent referred to

above and upon that condition having been met, the covenant binding all owners to consent and approve shall constitute the unanimous approval required for such amendments to the Declaration.

#### ARTICLE IV. PROPERTY RIGHTS

SECTION 1. *Rights in Common Areas.* Each Owner, together with his family and guests, may use the common area for all purposes for which it is designed and intended and no Owner may hinder or encroach upon the lawful rights of any other Owner with regard to such use of the common area.

Each Owner is entitled to the exclusive use and enjoyment for himself, members of his family, his tenants and guests of the following limited common areas:

- (a) Entrance drives servicing Owner's unit
- (b) All paved walks servicing Owner's unit

SECTION 2. *Delegation of Use.* Any Owner may delegate, in accordance with the Bylaws of the Association this Declaration or any other applicable rules or regulations, his right of enjoyment in and to the common area and other portions of the properties to the members of his family, his tenants and to guests.

SECTION 3. *Easements of Enjoyment and Limitations Thereon.* Every Owner shall have a right and easement of enjoyment in and to the common area including a right and easement of ingress and egress both vehicular and pedestrian with each unit not having a direct exit to a public street or highway having such an easement of ingress and egress both vehicular and pedestrian over a portion of the common area to which the unit has a direct exit which common area in turn leads to such a public street or highway; and these easements of enjoyment shall be appurtenant to and pass with title to every unit, subject to the following provisions and limitations:

(a) the right of the Declarant and/or the Association to charge reasonable use and other fees for the use of any recreational facility situation upon the common areas and to make reasonable rules and regulations through majority vote of the Directors concerning the use of the common areas. The Declarant and/or the Association shall have the right to impose different user fees for guests as opposed to user fees for members, shall have the right to limit guests and the manner and frequency of their use of the property, and to make all reasonable rules and regulations for the use and management of the common areas;

(b) the right of the Declarant and/or the Association to suspend the voting rights and right to use of the recreational facilities by an Owner and/or occupant for any period during which any assessment against his Unit remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the provisions of this Declaration, the Articles of Incorporation or the By-Laws of the Association or of its published rules and regulations;

(c) the right of the Declarant and/or the Owners to dedicate or transfer all or any part of or interest in the common area to a public agency, authority or utility for such purposes and under such conditions as may be agreed to by the Owners, provided, however, that the Declarant at any time prior to the time of the conversion of the Class B voting membership in accordance with the terms of Section 2, Article V herein shall have the right to dedicate or transfer all or any part of or interest in the common area to a public agency, authority or utility for such purposes and under such conditions as may be agreed to by the Declarant at the sole determination of Declarant without the consent of the Owners being required. Except as previously provided herein no such dedication or transfer shall be effective unless an instrument signed by two-thirds of each class of members agree to such dedication or transfer has been recorded in the



same manner as this Declaration. That part of or interest in the common area so dedicated or transferred shall be deemed to have been removed from the common area;

(d) the right of individual Owners to the exclusive use for their guests and/or themselves of any parking places which Declarant may construct on the common area to the extent that such parking places are designated by the Declarant or the Association for the exclusive use of such guests or of such Owners;

(e) the right to the use of the common area by Owners and occupants of the dwelling units situated on the land described in Article III, Section 1 of this Declaration, provided that such units are constructed and the land is annexed to this development by Declarant or Association. However, the Owners and occupants of such dwelling units shall pay their proportionate share of the costs of maintaining and operating the common area and shall be subject to all rules and regulations of the Association as a condition of such use.

## ARTICLE V. MEMBERS AND THEIR VOTING RIGHTS

SECTION 1. *Every Owner a Member.* Every Owner of a unit which is subject to assessment shall be a member of the Association which shall administer the common area. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

SECTION 2. *Classes of Voting.* The Association shall have two classes of voting membership with all voting rights and the exercise thereof being apportioned and exercised as provided herein.

*Class A.* Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members; however, in no event shall more than one vote be cast with respect to any one unit.

*Class B.* The sole Class B member shall be the Declarant and such member shall be entitled to nine (9) votes for each unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following event:

(a) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership, which by virtue of the nine to one ratio of votes between Class B and Class A will occur when ninety (90%) percent of the units included within this Declaration at that time have been sold by the Declarant; provided, however, that if additional land is thereafter annexed so as to create an additional number of units of such an amount that the proportion of units sold is decreased below ninety (90%) percent, then in that event the Class B membership shall be recreated automatically in the same manner and in the same condition as that in which it had existed originally.

SECTION 3. *Fiduciaries, Minor, Joint Ownership.* Fiduciaries and minors who are Owners of record of a unit or units may vote their respective interests as unit Owners. If two or more persons, whether fiduciaries, tenants in common, or otherwise, own undivided interests in a unit, each may exercise such proportion of the voting power of all Owners of his unit which is equivalent to his proportionate interest in the unit, but in no event shall more than one vote be cast with respect to any unit owned by Class A members and in no event shall more than nine votes be cast with respect to any unit owned by the Class B member.

SECTION 4. *Fiduciary Voting.* When any person has furnished to the Association proof, satisfactory to the Association, of his appointment and qualification as: executor under the last Will of a deceased unit Owner; an administrator of the estate of such a unit Owner; a guardian, committee or



conservator of the estate of a ward or incompetent who is a unit Owner; a trustee in bankruptcy of such a unit Owner; or a statutory or judicial receiver or liquidator of the estate or affairs of such a unit Owner; an assignee for the benefit of creditors of a unit Owner or any other fiduciary or representative, such fiduciary may vote as though he were the unit Owner.

#### ARTICLE VI. COVENANT FOR ASSESSMENTS; LIEN FOR ASSESSMENTS

**SECTION 1. *Creation of a Lien and Personal Obligation for Assessments.*** The Declarant for each unit owned within the properties hereby covenants and agrees to pay, and each Owner of any unit by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay, to the Association: (1) monthly assessments or charges; (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (3) special individual unit assessments for such expenses as are hereinafter provided for in the Article dealing with and entitled Maintenance. All such assessments shall be fixed, established and collected from time to time as hereinafter provided. Monthly and both types of special assessments together with interest thereon, costs and reasonable attorney's fees involved in any collection thereof, shall be a charge and a continuing lien in favor of the Association upon the property against which each such assessment is made. Such lien shall arise and run from the time at which any assessment remains unpaid for thirty (30) days after the same has become due and payable.

(a) Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent, shall bear interest from the due date at the rate of 10 percent (10%) per annum, and shall cause the entire unpaid portion of said assessment for said year to be deemed delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property through proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens, provided however that the holder of any mortgage on the unit upon which the payment is delinquent shall be given written notice addressed to the last known address of said holder of the delinquency prior to commencement of an action against the owner or foreclosure of the lien. Delivery of notice to the holder shall be when said notice addressed as above set out is placed in a U.S. Post Office mail box by the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his unit.

(b) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any property subject to assessment. Sale or transfer of any unit shall not affect the assessment lien. However, the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such unit from liability for any assessments thereafter becoming due or from the lien thereof.

(c) All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit 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.

**SECTION 2. *Purpose of Assessments.*** The assessments levied by the Association shall be used exclusively to enhance property values and to promote the recreation, health, safety and welfare of the residents in the properties and for the improvement and maintenance of the common area and of the units situated upon the properties, as provided in this Declaration. More particularly, the assessments shall be used:

(a) As to the monthly assessments, to pay common expenses as follows: The payment of water and sewer service charges and insurance for the individual units and the general maintenance services as described in the Article herein dealing with maintenance; the operation, management and administration and repair of the common area, the payment of insurance for the common area, payment of water and sewer service charges of the common area, and the operation, management and administration of the Association, including but not limited to the payment of such items of expense as lawn care, landscaping, care of trees and shrubbery, purchase of equipment, hand tools and other minor items necessary or appropriate to accomplish the maintenance and management duties of the Association, repair and maintenance of undedicated streets and walkways and parking areas, the removal of snow from such areas as may be designated by the Association, public utility services and facilities used for the common area or by the Association, and the use of personnel for the operation, management and administration of the common area and the Association, and other similar items of expense.

(b) As to the monthly assessments, to pay for the operation and maintenance of the community building and associated facilities located adjacent to the area described in Section 3, Recitals hereof and not in an area designated as a common area, in accordance with the terms of Article III, Section 1, hereof.

(c) As to the special assessments or charges for capital improvements, to pay for such items of common expense as are described or referred to in Section 4 of this Article.

(d) As to special individual unit assessments, to pay for such individual unit maintenance and repair services as are described in the Article dealing with Maintenance.

**SECTION 3. *Maximum Monthly Assessment.*** Until January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum monthly assessment per unit shall be as follows:

Three (3) Bedroom Units, types 2, 4 and 5, as shown on the plans of Declarant \$37.50

Two (2) Bedroom Units, types 1, 3, 6 and 7, as shown on the plans of Declarant \$31.50

(a) From and after January 1 of the year immediately following the conveyance of the first unit to an Owner, the maximum monthly assessment may be increased each year not more than six (6%) percent above the maximum monthly assessment for the previous year without a vote of the Membership.

(b) From and after January 1 of the year immediately following the conveyance of ninety (90%) percent of the units, the maximum monthly assessment may be increased above said six (6%) percent by a vote of two-thirds ( $\frac{2}{3}$ ) of the voting power of each class of members who are voting in person or by proxy, at a meeting duly called for that purpose.

(c) The Board of Directors may fix the monthly assessment at an amount not in excess of the maximum.

**SECTION 4. *Special Assessments for Capital Improvements.*** In addition to the monthly assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying part or all of the common expenses as to the cost of reconstruction, repair or replacement of capital improvements on the common area, and/or the construction of new capital improvements. Such special assessments may be levied only upon the affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the voting power of each class of members present in person or by proxy at a meeting of the members called under the terms of Section 5 hereof for the levying of a special assessment for capital improvements. Such assent shall be obtained prior to the incurring of any such cost.

SECTION 5. *Notice and Quorum for Meetings to Levy a Special Assessment for Capital Improvements (Section 4) or to Increase the Level of the Monthly Assessment (Section 3).* Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article shall be sent to all members not less than Ten (10) days nor more than Sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the second meeting shall be two-thirds (⅔) of the required quorum at the preceding meeting. No such subsequent meetings shall be held more than Sixty (60) days following the preceding meeting.

SECTION 6. *Uniform Rate of Assessment.* Both monthly assessments and special assessments for capital improvements must be fixed at a uniform rate for all similar units, and monthly or less frequent due dates may be established by the Directors so as to provide for installment collection of such special assessments. Provided, however, that all lots owned by Class B members while improvements thereon are under construction, and until such time as the property may be occupied by and conveyed to a Class A member, shall be excepted from payment of the Homes Association assessment, but said Class B member shall have the duty of maintaining the unit and the exterior of any improvements constructed on such unit owned by it until such unit is conveyed to a Class A member. Such excepted payments shall not be or become a lien against any such unit.

SECTION 7. *Date of Commencement of Monthly Assessments; Due Dates.* The monthly assessments provided for herein shall commence as to all units except as set out above on the first day of the first month following the sale of the first unit to an Owner other than the Declarant. The first monthly assessment shall be adjusted according to the number of days remaining in the month. The Board of Directors shall fix the amount of the monthly assessment against each unit at least fifteen (15) days in advance of each monthly assessment period. Written notice of the monthly assessment shall be sent to every Owner subject thereto. The due dates for payment of these assessments shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether all assessments on a specified Unit have been paid and the amount of unpaid assessments.

SECTION 8. *Effect of Nonpayment of Assessments; Remedies of the Association.* See Section 1(a), Article VI.

SECTION 9. *Subordination of the Lien to Mortgages.* See Section 1(b), Article VI.

## ARTICLE VII. MAINTENANCE

SECTION 1. *General Maintenance.* The Association shall provide for the perpetual maintenance of all private utility and sewer lines and shall maintain, repair and operate all common areas and utilities and equipment thereon. The Association shall also provide maintenance and repair to the exterior of all buildings and structures including but not limited to painting, repair and replacement of roofs, gutters, downspouts, exterior building surfaces and other exterior improvements excluding glass surfaces. Provided, however, that the following areas shall not be included in the general maintenance to be performed by the Association as described herein unless the Board of Directors adopt a resolution to include all or part of such areas, but shall be maintained by the unit Owner instead: glass surfaces and the substance of any glass which constitutes a portion of the exterior of the building; all limited common areas; the interior of garages; and mechanical elements of individual units (including, but not limited to, locks, seals, tracks, hinges and handles). The Association shall maintain, repair and replace lighting fixtures, standards, lamps and controls provided for drive and parking area illumination, but each unit may have one such exterior fixture attached to its electric service line by the Declarant and in such case the unit Owner shall be responsible for the supply of electric power to such one fixture.



**SECTION 2. *Negligent or Intentional Act; Failure to Act.*** In the event that a need for maintenance or repair of any portion of the property, including unit(s), is caused by the negligent or intentional act or failure to act of any Owner of any other unit within the Association, or of persons holding delegated user rights from any such Owner, or of any family, tenants, guests or invitees of such Owner, the cost of such maintenance and repair shall constitute an assessment against the unit Owned by such Owner. The determination that such maintenance or repair is necessary shall be made by a majority of the Board of Directors on the basis of protecting the public safety of residents or visitors to the properties or to prevent or avoid damage to or destruction of any part, portion or aspect of the value of the properties.

**SECTION 3. *Other Maintenance of the Unit.*** Maintenance of all other portions of the premises purchased by Owners shall be the responsibility of such Owners, including repair and maintenance of walls which are common to more than one unit. In the event an Owner of any unit shall fail to maintain the premises and improvements situated thereon to such an extent that in the opinion of the Board of Directors the conditions require maintenance, repair or service for purposes of protecting the public safety of residents in or visitors to the properties or to prevent or avoid damage to or destruction of any part, portion or aspect of the value of the properties, the Association shall have the right through its agents and employees, and after approval of a majority of the Board of Directors to enter upon said unit and to maintain, repair and service the same. The cost of such maintenance, repair or service shall be added to and become a part of the assessment to which such unit is subject. This type of assessment shall be known as the Special Individual Unit Assessment as referred to in Section 2(d) Article VI in this Declaration.

**SECTION 4. *Rehabilitation; Duty to Make Repairs; No Partition Sale.*** The Association may decide that the property is obsolete in whole or in part and elect to have the same renewed and rehabilitated, but this shall require the affirmative vote of all unit Owners. In the event of such a vote, the Board of Directors shall proceed with such renewal and rehabilitation and the cost thereof shall be a common expense and shall constitute a special assessment for capital improvements as referred to elsewhere in this Declaration. In the event of damage to or destruction of all or any part of the common area, such damage or destruction shall be repaired and restored promptly by the Board of Directors. No vote of the unit Owners may act as an election not to repair or to restore such damage or destruction, excepting in the event of a decision by the Owners to terminate or dissolve this Homes Association Declaration as described elsewhere in this Declaration. The cost of any repairs and restoration made by the Directors with regard to the common area shall be payable from the proceeds of insurance, if any, on the premises and the balance of such cost shall be a common expense.

## **ARTICLE VIII. GRANTS AND RESERVATIONS OF EASEMENTS**

**SECTION 1. *Easements for Repair, Maintenance and Restoration.*** The Association shall have a right of access and an easement to, over and through all of the Properties, including each Unit, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair, restoration and/or servicing of any items, units, things or areas of or on the Properties, provided that exercise of this easement as it affects the individual units shall be at reasonable times with reasonable notice to the individual unit Owners.

**SECTION 2. *Easement for Encroachments.*** Each building and all utility lines and other improvements as originally constructed on each unit, shall have an easement to encroach on any other unit and upon the common areas and dedicated areas as originally constructed and laid out; and the common areas, dedicated areas and each building and all utility lines and other improvements as originally constructed thereon, shall have a reciprocal easement for encroachment upon each unit and any portions of the property. Such encroachments may occur as the result of overhangs in the design, and location of buildings, utility lines and other improvements across boundary lines between and among units, common areas and dedicated areas.



SECTION 3. *Easement for Support.* Every portion of a unit, of utility easements and lines, of any portion of the properties contributing to the support of another unit, utility easement and lines, improvement, or another portion of the properties shall be burdened with an easement of support for the benefit of all other such units, utility easements and lines, improvements and other portions of the properties.

SECTION 4. *Utility Easements.* Easements shall exist as shown on the plat previously referred to herein and as subsequently dedicated by the Declarant, if any, for the benefit of all owners, the common areas, the reserved areas, if any, the units and all the property and for the benefit of any land subsequently annexed to and made a part of this Declaration, for conduits, pipelines, ducts, plumbing, poles, transformers, wiring and other utility items or facilities necessary or incidental to or for the original construction and development of units, common areas and other portions of the properties and for the maintenance, repair and servicing of any such utility items and facilities. No trees, shrubbery, structures, buildings, fences, pavements or similar improvements shall be grown, built or maintained within the area of a utility easement or right of way which may damage or interfere with their use. Any land subsequently annexed and any units constructed thereon shall have the right to tap in to, connect to and otherwise use all such easements, and utility facilities and equipment within such easement, without the payment of any fee or charge to the Association or Owners for the right to do so.

SECTION 5. *Easement for Right of Way.* Notwithstanding the legal description and surveys or plat of the property, any part of a lot conveyed which is not covered and delineated by the unit originally placed on the lot, except for the limited common areas, shall be subject to an easement right of way for the common use of the members of the Association, their families, tenants or contract purchasers who reside on the Properties, and such easement is hereby granted for such use.

SECTION 6. *Construction and Development Easement.* The Declarant shall have an easement of ingress and egress for the purpose of construction and development of any part of the properties, of additional units thereon or of additional land to be annexed to the properties, so long as the exercise of such easement does not unreasonably interfere with the use of the recreational facilities, or common areas and provided that such easement does not apply to individual Owners, nor to the limited common areas appurtenant to the completed and conveyed individual units, if any such limited common areas are included in this Declaration.

## ARTICLE IX. USE RESTRICTIONS

SECTION 1. *Single Family Residence.* No unit shall be used for any purpose other than as a residence site for a single family. For the purpose of this restriction upon use, a "family" shall be deemed to mean a group of one or more persons each of whom is related to the other by blood, marriage or adoption who are living together and maintaining a common household.

SECTION 2. *No Roomers or Boarders.* In accordance with the frequent approach in zoning codes of protecting values in resident districts by prohibiting the use of single-family residences for roomers and boarders, and in order to provide similar protection for the Owners of units, it is hereby provided that no boarders or roomers shall be permitted in addition to the family occupying each such unit.

SECTION 3. *Home Occupation.* The restriction above to the use of any unit as a single-family residence shall not prohibit the conduct of a "home occupation" upon said unit as defined herein. Home occupation means any occupation or profession carried on by members of the immediate "family" residing on the premises, in connection with which there is used no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a single family residence dwelling; in connection with which there is no commodity sold upon the premises, and no person is employed other than a member of the immediate family

residing on the premises, and no mechanical or electrical equipment is used except such as is permissible for and is customarily found in purely domestic or household premises for the family residing therein. A professional person may use his residence for infrequent consultation, or emergency treatment, or performance of occasional or emergency religious rites, but not for the general practice of his profession. Permitted home occupations shall not include barber shops, beauty shops, shoe or hat repair shops, tailoring shops or any type of pick up station or similar commercial activities but the recitation of these particular exclusions shall not be deemed to constitute authorization for the conduct of other businesses or enterprises which are precluded by the previous language of this paragraph or by other sections of the Declaration, Articles or ByLaws.

SECTION 4. *Additional Structures.* No additional and/or accessory structures of any nature whatsoever shall be erected upon any Unit, in addition to the basic single family residence, patio, and any other improvements originally provided by the Declarant. In the event that a replacement is deemed to be necessary, which replacement or addition must be approved by the Association or its Architectural Committee prior to the construction of the replacement in accordance with the terms of Article X hereof.

SECTION 5. *Parking.* Except as may be otherwise provided by specific regulations of the Association, no uncovered parking spaces on the properties shall be used for parking of any trailer, truck, boat or anything other than operative automobiles. The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation and used or so constructed that it is or may be mounted on wheels or any similar transporting device and used as a conveyance on streets and highways. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pickup truck or utility vehicle which is used as a passenger vehicle by persons occupying one of the Units. No covering or walling in of said uncovered parking spaces provided by the Declarant shall be permitted except as specifically approved by the Association or its Architectural Committee. Provided, however, that this section shall not apply so as to interfere with normal construction methods in the construction and development of any part of the properties, of additional units thereon or of additional land to be annexed to the properties.

SECTION 6. *Nuisances.* No illegal, noxious or offensive activities shall be carried on upon the unit or upon the common areas nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

SECTION 7. *Signs.* No signs of any kind shall be displayed to the public view of the properties except those:

- (a) On the common areas and approved in advance by the Directors;
- (b) Regarding and regulating the use of the common areas and approved in advance by the Directors;
- (c) Used by the Declarant to advertise the units for sale or to identify the financing and/or the construction agents during the construction and sales period.

SECTION 8. *Exterior Wiring, Antennas or Installations.* No exterior wiring or antennas shall be permitted on the exterior portion of any building or improvement situated upon any unit except as may be erected by the Declarant. No air conditioning or other types of installation shall be installed or permitted which appear on the exterior of any building or which protrude through the walls, roof, or window area of any building on any Unit except as may be installed by Declarant in the original construction, or as may subsequently be approved by the Association or its Architectural Committee.

SECTION 9. *Livestock, Poultry and Pets.* No animals, livestock, poultry or pets of any kind shall be raised, bred or kept upon or in any portion of the properties, except that up to two (2) dogs, cats and other household pets per household may be kept in and upon Units subject to the following provisions:

(a) Such pets may not be kept in or upon any unit, temporarily or permanently, for any commercial purpose;

(b) Such pets shall not run loose on portion of the properties other than the unit in which kept, and while on any other portion of the properties shall be kept upon a leash or similar physical restraint;

(c) It is understood that the enjoyment of the properties by all Owners and residents thereof, and the success of this development, might be jeopardized by violations of these conditions; accordingly, the Directors may by majority vote and after three complaints require that any certain pet(s) be removed permanently from the properties and the Owner of unit shall have a period of thirty (30) days to comply with such decision of the Directors;

(d) The Owner of a unit which has such pet(s) kept in or upon it—and not residents or the Owners of any other part of the properties—shall bear all risks which result from the presence of pets. Accordingly, such Owner shall be absolutely responsible for adherence by the pets to these conditions and absolutely liable for any and all damage done by such pets, and due care or absence of negligence shall not constitute a defense.

SECTION 10. *Trash, Storage, Disposal.* All trash, rubbish, garbage and other materials being thrown away or disposed of by unit Owners or residents on the premises must be placed or contained in one or more trash cans or containers purchased by the respective unit Owners or residents, which cans or containers shall be flytight, rodent proof, non-flammable, reasonably waterproof and which shall be covered. These cans or containers are to be stored in concealed locations on units, and may be placed in open locations only for a period not in excess of eight (8) continuous hours in any week, so as to facilitate collection. The outdoor placement of or storage of materials, equipment or other items on any outside portion of a unit, or on any portion of the common area, for a continuous period exceeding ten (10) days in length shall be prohibited, with the proviso that the placement or storage of such functional items as patio and outdoor living equipment, children's bicycles and play equipment and other items approved by the Directors of the Association shall be exempt from this provision. Because of the hazards of fire, storage of highly flammable or explosive matter is prohibited on any portion of the properties. Provided, however, that this section shall not apply so as to interfere with normal construction methods in the construction and development of any portion of the properties, or of additional land to be annexed to the properties or additional units thereon. The Association shall be responsible for pick-up and disposal only of such trash, rubbish, garbage and other materials as may result from operations and maintenance of the common area.

SECTION 11. *Temporary Structures.* No structure of a temporary character, shack, shed, tent, locker or other out building shall be used on any unit on a temporary or permanent basis unless included in the plans and specifications of such unit as constructed by the Declarant or unless approved under the provisions of this Declaration relating to architectural control, or unless used by the Declarant in normal construction methods. Provided, however, that this section shall not apply so as to interfere with normal construction methods in the construction and development of any part of the properties, of additional units thereon or of additional land to be annexed to the properties.

SECTION 12. *Open Fires.* No open fires shall be permitted on the individual unit premises, with the exception of outdoor grill-type fires used for the preparation of food to be consumed on the premises.



SECTION 13. *Interference with Maintenance by Association.* No Owner or resident of any portion of the properties shall have, claim or exercise any right to maintain, alter the appearance or improve any areas or surfaces of the properties maintained by the Association under the general maintenance provisions of this Declaration.

#### ARTICLE X. ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the properties (excepting any original construction or development by the Declarant) nor shall any exterior addition to or change or alteration therein be made (except by the Declarant) until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Directors, in the event the Directors, or their designated committee, fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Nothing in this Article shall be deemed to authorize any construction on, or addition to, or change in the properties as they are or may be constructed by the Declarant, which would be prohibited by other portions of this Declaration.

#### ARTICLE XI. PARTY WALLS

SECTION 1. *General Rules of Law to Apply.* Each wall which is built as a part of the original construction of the townhouses and/or garages upon the properties and is placed on the dividing line between the units, together with each fence which is placed on such a dividing line, shall constitute a party wall or party fence, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and party fences and liability for property damage thereto due to negligence or willful acts or omissions shall apply to said walls and fences.

SECTION 2. *Sharing of Repair and Maintenance.* The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use; provided, however, that to the extent the need for such repair or maintenance is caused by or results from acts or failure to act of the Owner, residents or invitees of only one unit, whether or not there was negligence or a willful act, the Owner of such one unit shall be solely responsible for the cost of such repair and maintenance.

SECTION 3. *Destruction by Fire or Other Casualty.* If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use and such contribution shall be due when the reconstruction costs are due and payable. The obligation and enforcement of such contribution shall be without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions or under the provisions of Section 2 of this Article.

SECTION 4. *Weatherproofing.* Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

SECTION 5. *Right to Contribution Runs with Land.* The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.



**SECTION 6. Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be submitted to and determined by a board of three arbitrators as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the arbitrators in such notice. Within ten (10) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure to do so, the party who has already named an arbitrator, may have the second arbitrator selected or appointed by a judge of the Johnson County District Court, State of Kansas, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and in the event the two arbitrators so appointed shall fail to appoint a third arbitrator, within ten (10) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by one of said judges, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement, or difference, and the decision of any two of them shall be final, conclusive and binding upon all parties. In all cases of arbitration, the parties hereto shall each pay the expense of its own attorneys' and witnesses' fees, and all other expenses of such arbitration shall be divided equally between the parties.

## **ARTICLE XII. INSURANCE**

**SECTION 1. Insurance To Be Obtained.** Each Owner shall obtain and maintain at all times, at his expense, the following insurance: (a) Public Liability Insurance covering each unit Owner, members of his family, tenants and guests, (b) Such other insurance for their benefit and at their expense covering their own furnishings and other items of personal and other property.

**SECTION 2. Waiver.** All policies of Public Liability Insurance obtained and maintained by the unit Owners shall contain waivers of subrogation as to any claims against unit Owners, the Association, its Board of Directors, its servants and agents, and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured and shall provide that such policies may not be canceled or substantially modified without at least ten (10) days prior written notice to the Board of Directors of the Association.

**SECTION 3. Board's Authority To Purchase.** The Board of Directors shall obtain and maintain, to the extent obtainable, the following insurance:

(a) Fire and other hazard insurance with standard extended coverage, vandalism and malicious mischief endorsements, insuring all buildings of which the units are a part, including all improvements and fixtures therein initially installed by the Declarant, together with all service equipment contained therein, on the basis of at least 80% co-insurance, and containing standard mortgage clauses in favor of the mortgagees, if any, of each individual unit which shall provide that the loss, if any, thereunder shall be payable to such mortgagee as its interests may appear, and

(b) Fire and other hazard insurance with extended coverage, vandalism and malicious mischief endorsements, insuring all of the common areas, all improvements and fixtures thereon initially installed by the Declarant, together with all service equipment thereon, in such amount as may be designated adequate by the Board of Directors.

(c) Public Liability Insurance in such limits as the Board of Directors may from time to time determine, covering the common areas and with cross liability endorsement to cover liabilities of the unit Owners as a group to a unit Owner.

(d) Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

SECTION 5. *Premiums.* Premiums on insurance policies purchased by the Association shall be paid promptly by the Association and charged as common expenses.

SECTION 6. *Common Areas.* Proceeds on account of loss or damage to common areas shall be held as follows: an undivided share for each unit Owner, such share being the same as the undivided share in the common areas appurtenant to his unit.

### ARTICLE XIII. DESTRUCTION, DAMAGE OR OBSOLESCENCE

SECTION 1. (a) *Prompt Repair and Restoration.* In case of fire, casualty or any other disaster, resulting in damage or destruction, each unit Owner, who owns a damaged unit, shall be responsible for accomplishing the repair and reconstruction of his separate and entire unit. The insurance proceeds, if sufficient to reconstruct the building(s), shall be applied by the Board of Directors, to such reconstruction, and the building(s) shall be promptly repaired and reconstructed. Reconstruction of the building(s), as used in this paragraph, means restoring the building(s) to substantially the same condition in which it or they existed prior to the fire, casualty or other disaster, with each unit and the common area having the same vertical boundary as before.

If the insurance proceeds are insufficient to reconstruct the building(s), damage to or destruction of each unit shall be promptly repaired and restored, using the proceeds of the insurance, required to be carried for that purpose, under Article XII above, and assessment shall be made against the individual unit Owners who own the damaged units in sufficient amounts to provide funds for any deficiency.

(b) For the purpose of dealing with the property upon its damage or destruction as herein provided all the Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead, to repair and restore all damaged units as promptly as possible under the circumstances.

As attorney-in-fact, the Association, by its President and Secretary or Assistant Secretary or its other duly authorized officers or agents, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or other instrument with respect to the interest of a unit Owner, which are necessary and appropriate to exercise the powers herein granted. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and restoration.

The proceeds of any insurance collected shall be available to the Association as attorney-in-fact for the purpose of repair, restoration, reconstruction or replacements.

Title to any unit is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact as herein provided.

SECTION 2. *Obsolescence of Common Area.* The Owners representing an aggregate ownership interest of eighty (80%) percent, or more, of the general common area may agree that the general common area is obsolete and adopt a plan for the renewal and reconstruction, which plan has the approval of eighty (80%) percent, or more, of the first mortgagees of record at the time of the adoption of such plan. If a plan for the renewal or reconstruction is adopted, notice of such plan shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners as a common expense, whether or not they have previously consented to the plan of renewal and reconstruction. The Association, as attorney-in-fact, shall have the absolute right and power to sell the unit of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the unit of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay

to the Association the costs and expenses for filing the notices, interest at the rate of ten (10%) percent per annum on the amount of the assessment and all reasonable attorney's fees. The proceeds derived from the sale of such unit shall be used and disbursed by the Association, as attorney-in-fact, in the following order.

1. For payment of taxes and special assessments liens in favor of any assessing entity and the customary expense of sale;
2. For payment of the balance of the lien of any first mortgage;
3. For payment of unpaid common expenses and all costs, expenses and fees incurred by the Association;
4. For payment of junior liens and encumbrances in the order of and to the extent of their priority; and
5. The balance remaining, if any, shall be paid to the former Unit Owner.

**SECTION 3. *Obsolescence of Units.*** The Owners representing an aggregate ownership interest of eighty-five (85%) percent, or more, of the general common area may agree that the units are obsolete and that the same should be sold. Such plan or agreement must have the unanimous approval of every first mortgagee. In such instance, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the entire premises may be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Articles of Incorporation and the By-Laws. The sales proceeds shall be apportioned among the Owners on the basis of each Owner's interest in the general common area, and such apportioned proceeds shall be paid into separate accounts, each such account representing one unit. Each such account shall be in the name of the Association, and shall be further identified by the unit designation and the name of the Owner. From each separate account the Association, as attorney-in-fact, shall use and disburse the total amount (of each) of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided in Section 2, 1 through 5.

#### **ARTICLE XIV. GENERAL PROVISIONS**

**SECTION 1. *Covenants Running With the Land; Amendment of Declaration.*** The covenants, conditions, restrictions and easements of this Declaration and of the Articles of Incorporation of the Association 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 period of ten (10) years unless an instrument signed by not less than seventy-five (75%) percent of unit Owners has been recorded, which instruments provide for amending or terminating this Declaration, in whole or in part. During the first twenty-year period of this Declaration, it may be amended in whole or in part only by an instrument signed by not less than ninety (90%) percent of the unit Owners, and consented to in writing by all holders of first mortgage liens on said units excepting as in the following matters which shall not be altered:

- (a) Since this Declaration grants the right to annex additional land, such rights shall not be altered;
- (b) The right to grant or receive the ingress and egress easements referred to in Article III, Section 1 shall not be altered; and
- (c) No right to a partition sale of all or part of the property shall be created by such amendment.

All amendments to this Declaration shall be recorded in the Register of Deeds Office of Johnson County, Kansas.

**SECTION 2. *Rights of Holders of First Mortgage Liens.*** (a) Unless all holders of first mortgage liens on individual units have given their prior written approval, the Association except to the extent permitted in ARTICLE III hereof, shall not be entitled to:

(1) change the pro rata interest or obligations of any unit for purposes of levying assessments and charges and determining shares of the common elements and proceeds of the project;

(2) partition or subdivide any unit or the common area of the project; nor

(3) by act or omission seek to abandon the project except in accordance with the terms of the Declaration and in case of substantial loss to the units and common area.

(b) All taxes, assessments and charges which may become liens prior to the mortgage under local law shall relate only to the unit and said unit's interest in the common areas.

**SECTION 3. *Severability.*** Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 4. *Enforcement.*** In addition to any other remedies provided in this Declaration, the Association and/or any Owner(s) shall have the right to enforce, by any proceeding at law or equity, all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by or through the provisions of this Declaration, the Association's Articles of Incorporation, By-Laws and rules and regulations.

**SECTION 5. *Titles and Captions.*** The titles and captions of the various provisions of this Declaration are not part of the content hereof, but are merely labels to assist in locating paragraphs and provisions herein.



IN WITNESS WHEREOF, the Declarant, Kaiser Aetna, a California General Partnership, has caused this document to be executed on the date first above mentioned.

Signed and acknowledged in the presence of: KAISER AETNA, a California General Partnership

\_\_\_\_\_  
By \_\_\_\_\_  
Its Duly Authorized Agent.

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 1973, before me, the undersigned, a Notary Public, personally appeared R. R. WEATHERBIE, known to me to be the duly authorized agent of all of the partners of the partnership that executed the within instrument, and acknowledged to me that he executed the same for and on behalf of said partnership and that such partnership executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in \_\_\_\_\_ the day and year last above written.

\_\_\_\_\_  
Notary Public in and for said County and State

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**(To Homes Association Declaration)**

**TRACT ONE**

All that part of the Southwest Quarter (SW ¼) of Section 7, Township 13, Range 25, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the West line of the SW ¼ of said Section 7 and 1485.91 feet South from the Northwest corner thereof; thence N 90° E, along a line at right angles to the West line of the SW ¼ of said Section 7, a distance of 55.00 feet; thence S 69° 02' 39" E, a distance of 173.81 feet; thence N 88° 07' 20" E, a distance of 199.12 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the left 73° 37' 08" from the last described course, having a radius of 324.00 feet, a distance of 156.26 feet; thence S 90° E along a line which deflects to the right 47° 51' 52" from the tangent to the last described curve, at the last described point, a distance of 339.27 feet; thence N 0° E, a distance of 221.98 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the right 69° 10' 24" from the tangent to the last described curve at the last described point, a distance of 67.19 feet; thence N 76° 31' 14" E, a distance of 104.63 feet; thence Northeasterly along a curve to the right from the last described course as a tangent, having a radius of 474.00 feet, a distance of 45.11 feet; thence N 81° 58' 22" E, a distance of 56.44 feet; thence N 8° 01' 38" W, a distance of 212.76 feet to a point on the South right-of-way line of 108th Terrace, as now established; thence Northeasterly along the South right-of-way line of said 108th Terrace, said line being a curve to the left, tangent to said curve deflecting to the right 83° 29' 51" from the last described course, having a radius of 1130.00 feet, a distance of 112.82 feet; thence N 69° 45' 00" E along the South right-of-way line of said 108th Terrace, a distance of 455.14 feet; thence S 0° W a distance of 861.38 feet; thence N 90° W, a distance of 855.00 feet; thence S 0° W, a distance of 200.00 feet; thence S 45° W, a distance of 424.26 feet; thence N 90° W a distance of 445.00 feet to a point on aforesaid West line of the SW ¼ of said Section 7, thence N 0° E along the West line of the SW ¼ of said Section 7, a distance of 596.41 feet to the point of beginning.

The above described tract containing 21.27 acres, more or less.

**TRACT TWO (CLUB HOUSE AREA)**

All that part of the Southwest Quarter (SW ¼) of Section 7, Township 13, Range 25, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Commencing at a point on the West line of the SW ¼ of said Section 7 and 1485.91 feet South from the Northwest corner thereof; thence N 90° E, along a line at right angles to the West line of the SW ¼ of said Section 7, a distance of 55.00 feet; thence S 69° 02' 39" E, a distance of 173.81 feet; thence N 88° 07' 20" E, a distance of 199.12 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the left 73° 37' 08" from the last described course, having a radius of 324.00 feet, a distance of 156.26 feet, to the point of beginning of a tract of land to be herein described; thence continuing Northeasterly along the last described curve, a distance of 80.48 feet; thence N 56° 22' 02" E, a distance of 209.62 feet; thence Northeasterly along a curve to the right from the last described course as a tangent, having a radius of 524.00 feet, a distance of 117.12 feet; thence S 0° E along a line which deflects to the right 110° 49' 36" from the tangent to the last described curve at the last described point, a distance of 221.98 feet; thence N 90° W, a distance of 339.27 feet to the point of beginning.

The above described tract containing 1.01 acres, more or less.

ARTICLES OF INCORPORATION  
OF  
THE VILLAGES OF OVERLAND VIEW HOMES ASSOCIATION, INC.

We, the undersigned incorporators hereby associate ourselves together to form and establish a corporation NOT FOR PROFIT under the laws of the State of Kansas.

*FIRST:* The name of the corporation is:

THE VILLAGES OF OVERLAND VIEW HOMES ASSOCIATION, INC.

*SECOND:* The location of its registered office in Kansas is: 102 Cloverleaf 4 Building, 6400 Glenwood, Shawnee Mission, Kansas 66202, Johnson County, and the registered agent in charge thereof at such address is W. L. Galbreath.

*THIRD:* The purpose or purposes for which the corporation is formed are:

A. To function as the Homeowners' Association with regard to the real estate described in Exhibit A, attached hereto and made a part hereof, under the terms of The Villages of Overland View Homes Association Declaration which is, or is to be, recorded with the Register of Deeds of Johnson County, Kansas, and in connection therewith to provide for the maintenance, preservation and architectural control of the property described in Exhibit A under the terms of said Declaration, and to promote the health, safety and welfare of the residents and owners of the above described property and to act in the same manner with regard to any other property which may hereafter be brought within the jurisdiction of this Association.

B. To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the aforesaid Declaration, as the same may be amended from time to time as herein provided, said Declaration being incorporated herein by reference;

C. To fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office, administrative and other expenses incident to the conduct of the business of the Association, including all license fees, taxes or governmental charges levied or imposed against the property of the Association;

D. To dedicate, sell or transfer all or any part of the Common Area to any public agency, authority or utility in accordance with the terms and to the extent permitted by the Declaration.

E. To participate in mergers and consolidations with other not for profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of seventy-five percent (75%) of the voting power of the entire membership, except as may be provided to the contrary in the Declaration;

F. To acquire additional Units, Common Areas, Dedicated Areas, or other forms of property in addition to that described in the Declaration when it was first recorded, but only in accordance with the provisions of the Declaration;

G. To own, acquire, build, operate and maintain footways, parking areas, driveways, utility lines, recreation areas, playgrounds, swimming pools and any structures, fixtures and all personal properties incidental thereto, in accordance with the terms of the Declaration;

H. To obtain, pay for and maintain liability, hazard and other appropriate insurance upon the individual units and the Common Area, to the extent permitted by the Declaration;

I. To enforce all covenants, restrictions, reservations, servitudes, profits, licenses, conditions, agreements, easements and liens to which such real property is or may become subject and which the Association shall have the right to enforce;

J. To represent and promote the welfare of its members generally, and to cooperate with municipal, county, state and other public authorities for the promotion and betterment of the interests of such members;

K. To purchase, lease or otherwise acquire, to hold and use, to sell, lease or otherwise dispose of, and to deal in or with personal property of any description and any interest therein;

L. To purchase, lease or otherwise acquire, to invest in, hold, use and encumber, to sell, lease, exchange, transfer or otherwise dispose of, and to construct, develop, improve, equip, maintain and operate structures and real property of any description and any interest therein;

M. To borrow money, to issue, sell and pledge its notes, bonds and other evidences of indebtedness, to secure any of its obligations by mortgage, pledge or deed of trust of all or any of its property, and to guarantee and secure obligations of any person, all to the extent necessary, useful or conducive to carrying out any of the purposes of the corporation.

N. To invest its funds in any shares or other securities of another corporation, business or undertaking or of a government, governmental authority or governmental subdivision;

O. To do any other thing necessary, expedient, incidental, appropriate or convenient to the carrying out of the foregoing purposes or which will promote the common benefit and enjoyment of the residents or owners of the units, insofar as not prohibited by law or the Declaration; and

P. To do whatever is deemed necessary, useful or conducive to carrying out any of the purposes of the corporation and to exercise all other authority enjoyed by corporations generally by virtue of the provisions of the laws of Kansas relating to not for profit corporations.

Nothing in these Articles of Incorporation or in the Bylaws shall authorize the corporation to, and the corporation shall not, enter into any transaction, carry on any activity, or engage in any business for pecuniary profit. The net earnings of the corporation, if any, shall not inure to the benefit of any incorporator, member, or any member of the Board of Directors of the corporation, or any private individual.

**FOURTH:** The affairs of this Association shall be managed by a Board of Directors who need not be members of the Association. The number of directors may be changed by amendment of the Bylaws of the Association, but in no event shall the number of directors be less than three (3). The



names and addresses of the persons who are to act in the capacity of initial directors and until the selection of their successors are:

NAME	ADDRESS
R. R. Weatherbie	P. O. Box 15290 Cincinnati, Ohio 45215
R. L. Brown	P. O. Box 15290 Cincinnati, Ohio 45215
W. L. Galbreath	6400 Glenwood Shawnee Mission, Kansas 66202

*FIFTH:* Every Owner of a Unit as described in the Declaration and as created by that Declaration which is subject by covenants of record contained in the Declaration to assessment by the Association, including purchasers on land installment contracts and including contract sellers on other forms of executory contracts for the sale of a Unit, but excluding those holding record title or a similar interest merely as security for the performance of an obligation, shall automatically on acquisition of such Ownership interest in a unit be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment. Such membership shall terminate upon the sale or other disposition by such Unit Owner of his Ownership interest, at which time the new Unit Owner shall automatically become a member of the Association.

*SIXTH:* The Association shall not have authority to issue capital stock.

*SEVENTH:* The Association shall have two classes of voting membership:

*Class A.* Class A members shall be all owners (with the exception of the Declarant of The Villages of Overland View Homes Association Declaration for as long as a Class B membership exists) and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as set forth in the Declaration.

*Class B.* The sole Class B member shall be the Declarant (as defined in the Declaration) and such member shall be entitled to nine (9) votes for each unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following event: When the total votes outstanding in the Class B Membership, which by virtue of the nine to one ratio of votes between Class B and Class A will occur when ninety (90%) percent of the units included within the Declaration at that time have been sold by the Declarant; provided, however, that if additional land is thereafter annexed so as to create an additional number of units of such an amount that the proportion of units sold is decreased below ninety (90%) percent, then in that event the Class B membership shall be recreated automatically in the same manner and in the same condition as that in which it had existed originally.

Provided, however, that nothing herein shall be construed to prohibit the Class B member from converting all its Class B membership with the results set forth above at any time by a written statement executed by the Declarant and delivered to the Association.

The Class B member shall be entitled to elect or appoint a majority of the Board of Directors until the Class B membership ceases to exist or in the event that additional land is not annexed in accordance with the terms hereof.

*EIGHTH:* Upon dissolution of the corporation, any assets remaining after payment or adequate provision for payment of all debts and obligations of the corporation shall be expended in furtherance of the purposes set forth herein. If no successor in interest to the corporation is formed to administer the property of the corporation, its assets shall be distributed to its members according to a plan adopted and administered by the Board of Directors of the corporation.

*NINTH:* The corporation shall exist perpetually, unless dissolved earlier under the terms of these Articles.

*TENTH:* Amendment of these Articles shall require the assent of members holding at least seventy-five (75%) percent of the voting power of the Association, except as may be provided to the contrary in the Declaration.

*ELEVENTH:* A director or officer of the corporation shall not be disqualified by his office from dealing or contracting with the corporation as a vendor, purchaser, employee, agent or otherwise; nor shall any transaction, contract or act of the corporation be void or voidable or in any way affected or invalidated by reason of the fact that any director or officer of any firm of which such director or officer is a member, or any corporation of which such director or officer is a shareholder, director or officer, is in any way interested in such transaction, contract or act; provided, however, that the fact that such director, officer, firm or corporation is so interested must be disclosed to or known by the Board of Directors or such members thereof as shall be present at the meeting of said Board at which action is taken upon such matters. No director or officer shall be accountable or responsible to the corporation for or in respect to any such transaction, contract, or act or for any gains or profits realized by him or by any organization affiliated with him as a result of such transaction, contract or act. Any such director or officer may be counted in determining the existence of a quorum at any meeting of the Board of Directors of the corporation which shall authorize or take action in respect of any such contract, transaction or act, and may vote to authorize, ratify or approve any such contract, transaction or act, with like force in effect as if he or any firm of which he is a member or a corporation of which he is a shareholder, officer or director, were not interested in such transaction, contract or act.

*TWELFTH:* The corporation shall indemnify any and every board member, officer or employee against expenses, judgments, decrees, fines, penalties or amounts paid in settlement in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which such board member, officer or employee is or may be made a party by reason of being or having been such board member, officer or employee, provided a determination is made by the board of directors to the effect (a) that such board member, officer or employee was not, and has not been adjudicated to have been, negligent or guilty of misconduct in the performance of his duty to the corporation of which he is a board member, officer or employee, (b) that he acted in good faith in what he reasonably believed to be the best interest of such corporation, and (c) that, in any matter the subject of a criminal action, suit or proceeding, he had no reasonable cause to believe that his conduct was unlawful. Such indemnification shall not be deemed exclusive of any other rights to which such board member, officer or employee may be entitled under these Articles, the Bylaws of this corporation, any agreement or any insurance purchased by this corporation, or by vote of the members, or otherwise.

THIRTEENTH: The names and mailing addresses of each of the incorporators are:

NAME	ADDRESS
B. Douglas Varner	9933 Foster Overland Park, Kansas 66212
Kenneth V. Butler	9801 Cedar Drive Shawnee Mission, Kansas 66207
John T. May	5800 West 85th Terrace Overland Park, Kansas 66207

IN WITNESS WHEREOF, we have hereunto subscribed our names this \_\_\_\_ day of \_\_\_\_\_, 1973.

\_\_\_\_\_  
B. Douglas Varner

\_\_\_\_\_  
Kenneth V. Butler

\_\_\_\_\_  
John T. May

STATE OF MISSOURI                    )  
  ) ss  
COUNTY OF JACKSON                )

Personally appeared before me, a Notary Public in and for the above county and state, the above named B. Douglas Varner, Kenneth V. Butler and John T. May, who are personally known to me to be the same persons who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 1973.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

## EXHIBIT A (TO ARTICLES OF INCORPORATION)

### TRACT ONE

All of block 1 of Overland View—Village One, a subdivision of land in the City of Overland Park, Johnson County, Kansas, as shown on the record plat thereof, except the following described tract of land:

All that part of the Southwest Quarter (SW  $\frac{1}{4}$ ) of Section 7, Township 13, Range 25, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Commencing at a point on the West line of the SW  $\frac{1}{4}$  of said Section 7 and 1485.91 feet South from the Northwest corner thereof; thence N  $90^{\circ}$  E, along a line at right angles to the West line of the SW  $\frac{1}{4}$  of said Section 7, a distance of 55.00 feet; thence S  $69^{\circ} 02' 39''$  E, a distance of 173.81 feet; thence N  $88^{\circ} 07' 20''$  E, a distance of 199.12 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the left  $73^{\circ} 37' 08''$  from the last described course, having a radius of 324.00 feet, a distance of 156.26 feet, to the point of beginning of a tract of land to be herein described; thence continuing Northeasterly along the last described curve, a distance of 80.48 feet; thence N  $56^{\circ} 22' 02''$  E, a distance of 209.62 feet; thence Northeasterly along a curve to the right from the last described course as a tangent, having a radius of 524.00 feet, a distance of 117.12 feet; thence S  $0^{\circ}$  E along a line which deflects to the right  $110^{\circ} 49' 36''$  from the tangent to the last described curve at the last described point, a distance of 221.98 feet; thence N  $90^{\circ}$  W, a distance of 339.27 feet to the point of beginning.

The above described tract containing 1.01 acres, more or less.

### TRACT TWO

All that part of the Southwest Quarter (SW  $\frac{1}{4}$ ) of Section 7, Township 13, Range 25, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the West line of the SW  $\frac{1}{4}$  of said Section 7 and 1485.91 feet South from the Northwest corner thereof; thence N  $90^{\circ}$  E, along a line at right angles to the West line of the SW  $\frac{1}{4}$  of said Section 7, a distance of 55.00 feet; thence S  $69^{\circ} 02' 39''$  E, a distance of 173.81 feet; thence N  $88^{\circ} 07' 20''$  E, a distance of 199.12 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the left  $73^{\circ} 37' 08''$  from the last described course, having a radius of 324.00 feet, a distance of 156.26 feet; thence S  $90^{\circ}$  E along a line which deflects to the right  $47^{\circ} 51' 52''$  from the tangent to the last described curve, at the last described point, a distance of 339.27 feet; thence N  $0^{\circ}$  E, a distance of 221.98 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the right  $69^{\circ} 10' 24''$  from the tangent to the last described curve at the last described point, a distance of 67.19 feet; thence N  $76^{\circ} 31' 14''$  E, a distance of 104.63 feet; thence Northeasterly along a curve to the right from the last described course as a tangent, having a radius of 474.00 feet, a distance of 45.11 feet; thence N  $81^{\circ} 58' 22''$  E, a distance of 56.44 feet; thence N  $8^{\circ} 01' 38''$  W, a distance of 212.76 feet to a point on the South right-of-way line of 108th Terrace, as now established; thence Northeasterly along the South right-of-way line of said 108th Terrace, said line being a curve to the left, tangent to said curve deflecting to the right  $83^{\circ} 29' 51''$  from the last described course, having a radius of 1130.00 feet, a distance of 112.82 feet; thence N  $69^{\circ} 45' 00''$  E along the South right-of-way line of said 108th Terrace, a distance of 455.14 feet; thence S  $0^{\circ}$  W a distance of 861.38 feet;



thence N 90° W, a distance of 855.00 feet; thence S 0° W, a distance of 200.00 feet; thence S 45° W, a distance of 424.26 feet; thence N 90° W a distance of 445.00 feet to a point on aforesaid West line of the SW ¼ of said Section 7, thence N 0° E along the West line of the SW ¼ of said Section 7, a distance of 596.41 feet to the point of beginning.

The above described tract containing 21.27 acres, more or less.

#### **TRACT THREE (CLUB HOUSE AREA)**

All that part of the Southwest Quarter (SW ¼) of Section 7, Township 13, Range 25, now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Commencing at a point on the West line of the SW ¼ of said Section 7 and 1485.91 feet South from the Northwest corner thereof; thence N 90° E, along a line at right angles to the West line of the SW ¼ of said Section 7, a distance of 55.00 feet; thence S 69° 02' 39" E, a distance of 173.81 feet; thence N 88° 07' 20" E, a distance of 199.12 feet; thence Northeasterly along a curve to the right, tangent to said curve deflecting to the left 73° 37' 08" from the last described course, having a radius of 324.00 feet, a distance of 156.26 feet, to the point of beginning of a tract of land to be herein described; thence continuing Northeasterly along the last described curve, a distance of 80.48 feet; thence N 56° 22' 02" E, a distance of 209.62 feet; thence Northeasterly along a curve to the right from the last described course as a tangent, having a radius of 524.00 feet, a distance of 117.12 feet; thence S 0° E along a line which deflects to the right 110° 49' 36" from the tangent to the last described curve at the last described point, a distance of 221.98 feet; thence N 90° W, a distance of 339.27 feet to the point of beginning.

The above described tract containing 1.01 acres, more or less.

# BYLAWS OF THE VILLAGES OF OVERLAND VIEW HOMES ASSOCIATION, INC.

The Villages of Overland View Homes Association, Inc. has been formed as a Corporation Not for Profit under the laws of the State of Kansas to act as the Villages of Overland View Homes Association.

The following material shall be deemed to constitute, and shall be construed to be, the Bylaws of this Kansas Not for Profit Corporation.

## ARTICLE I. THE ASSOCIATION

**SECTION 1. *Name and Nature of Association.*** The name for the not for profit corporation as set forth above will not be repeated throughout these Bylaws, but said corporation shall hereinafter be referred to as the "Association."

**SECTION 2. *Definitions.*** For all purposes throughout these Bylaws the definitions contained in the Homes Association Declaration (and Imposing Covenants, Conditions and Restrictions) shall apply, and the contents of that Declaration are incorporated by reference in these Bylaws as fully as though completely rewritten. In the event of any conflict between the contents of that Declaration and the remaining provisions of these Bylaws, the language and requirements of the Declaration shall prevail.

**SECTION 3. *Membership.*** Each Unit Owner upon acquisition of an Ownership Interest in a Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such Unit Owner of his Ownership Interest, at which time the new Unit Owner shall automatically become a member of the Association.

**SECTION 4. *Voting Rights.*** The Association shall have two classes of voting membership with all voting rights and the exercise thereof being apportioned and exercised as provided herein.

**CLASS A.** Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each unit owned. When more than one person holds an interest in any unit, all such persons shall be members; however, in no event shall more than one vote be cast with respect to any one unit.

**CLASS B.** The sole Class B member shall be the Declarant (as defined in the Declaration) and such member shall be entitled to nine (9) votes for each unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following event:

(a) When the total votes outstanding in the Class A Membership equals the total votes outstanding in the Class B Membership, which by virtue of the nine to one ratio between Class B and Class A will occur when ninety (90%) percent of the units included within the Declaration at that time have been sold by the Declarant; provided, however, that if additional land is thereafter annexed so as to create an additional number of units of such an amount that the proportion of units sold is decreased below ninety (90%) percent, then in that event the Class B membership shall be recreated automatically in the same manner and in the same condition as that in which it had existed originally.

SECTION 5. *Proxies.* Members may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or their behalf shall be made in writing to the Board and shall be revocable at any time by actual notice to the Board by the member or members making such designation. Notice to the Board in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized.

SECTION 6. *Meetings of Members.*

A. *Annual Meetings.* The annual meeting of members of the Association for the election of members of the Board, the consideration of reports to be laid before such meeting, and the transaction of such other business as may properly be brought before such meeting shall be held at the office of the Association, or at such other place within the County where the real property covered by the Declaration is located, or any county adjacent thereto, as may be designated by the Board and specified in the notice of such meeting. Meetings shall be held at 8:00 P.M. unless a different time is designated by the Board and specified in the notice of the meeting. The first annual meeting of members of the Association shall be held one year from the date of incorporation of the Association, and subsequent annual meetings shall be held on the same day in each subsequent year, if not a legal holiday, and if a legal holiday, then on the next succeeding business day.

B. *Special Meetings.* Special meetings of the members shall be called upon the written request of the President of the Association or, in case of the President's absence, death or disability, the Vice President of the Association authorized to exercise the authority of the President, the Board by action at a meeting, or by members entitled to exercise at least twenty-five percent (25%) of the voting power. Calls for such meetings shall specify the time, place and purposes thereof. No business other than that specified in the call shall be considered at any special meeting.

C. *Notices of Meetings.* Not less than seven (7) nor more than sixty (60) days before the day fixed for a meeting of the members of the Association, written notice stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by these Bylaws to give such notice. The notice shall be given by personal delivery or by mail to each member of the Association. If mailed, the notice shall be addressed to the members of the Association at their respective addresses as they appear on the records of the Association. Notice of the time, place and purposes of any meeting of members of the Association may be waived in writing, either before or after the holding of such meeting, by any member of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at any such meeting without protesting the lack of proper notice, prior to or at the commencement of the meeting, shall be deemed to be a waiver by him of notice of such meeting.

D. *Quorum; Adjournment.* At any meeting of the members of the Association entitled to exercise a majority of the voting power of the Association present in person or by proxy shall constitute a quorum for such meeting; provided, however, that no action required by law, by the Declaration, or by these Bylaws to be authorized or taken by a designated percentage of the voting power of the Association may be authorized or taken by a lesser percentage; and provided further, that the members of the Association entitled to exercise a majority of the voting power represented at a meeting of members, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

E. *Order of Business.* The order of business at all annual meetings of members of the Association shall be as follows:

- (1) Calling of meeting to order
- (2) Proof of notice of meeting or waiver of notice
- (3) Reading of minutes of preceding meeting
- (4) Reports of officers
- (5) Reports of committees
- (6) Election of inspectors of election
- (7) Election of members of Board
- (8) Unfinished and/or old business
- (9) New business
- (10) Adjournment

F. *Vote Required for Action by Members.* When a quorum is present or represented at any meeting of the members, a majority of the voting power present or represented by proxy at such meeting shall decide any question brought before the meeting, unless the issue is one upon which by express provision of the Articles of Incorporation, the Declaration, these Bylaws or by Kansas statutes a different vote is required, in which case such express provisions shall govern and control the vote necessary to decide the question.

SECTION 7. *Actions Without a Meeting.* All actions, except removal of a Board member, may be taken without a meeting with the approval of, and in a writing or writings signed by members of the Association having the percentage of voting power required to take such action if the same were taken at a meeting. Such writings shall be filed with the Secretary of the Association.

## ARTICLE II. BOARD OF DIRECTORS

SECTION 1. *Number and Qualification.* The Board shall consist of five persons. Except for those persons elected or appointed by the Declarant, as hereinafter provided, persons nominated and elected to the Board shall be both a unit owner and occupant.

The Declarant, Kaiser Aetna, a California General Partnership, its successors and assigns, shall have a right to elect or appoint a majority of the Board of Directors for so long as there is a Class B membership. The members appointed by the Declarant shall hold office for the same term as other Board members, but may be removed as a member at the Declarant's pleasure and without cause, on three days written notice by the Declarant to the Association or to any two Board members other than the one being removed. The Declarant shall have the right to appoint replacements for any member elected or appointed by it, who shall have resigned or been removed, without the requirement for any Board meeting or membership meeting. A Board member appointed or elected by the Declarant who resigns or is removed as a member by the Declarant, and who holds an office of this Association required to be held by a Board member shall forthwith automatically be removed as such officer.



SECTION 2. *Election of Board; Vacancies.* Board members shall be elected at the annual meeting of members of the Association or at a special meeting called for such purpose. At a meeting of members of the Association at which Board members are to be elected, only persons nominated as candidates shall be eligible for election as Board members and the candidates receiving the greatest number of votes shall be elected. In the event of the occurrence of any vacancy or vacancies in the Board, however caused, the remaining Board members, though less than a majority of the whole authorized number of Board members, may, by vote of a majority of their number at a special meeting for such purpose, fill any such vacancy for the unexpired term; provided, however, that a vacancy in the position filled by appointment by the Declarant shall be filled by a subsequent designation of the Declarant, as provided in Section 1 of this Article II.

SECTION 3. *Term of Office; Resignations.* Each Board member shall hold office until the next annual or succeeding annual meeting of the members of the Association, as the case may be, and until his successor is elected or until his earlier resignation, removal from office or death. Any Board member may resign at any time by oral statement to the Association, such resignation to take effect immediately or at such other time as the Board member may specify. Members of the Board shall serve without compensation. At the first annual meeting of the members of the Association, the term of office of two Board members shall be two (2) years (one of whom shall be designated by Declarant pursuant to Section 1 of this Article II) and the term of office of the remaining Board member shall be one (1) year. At the expiration of such initial term of office of each respective Board member, his successor shall be elected to serve for a term of two (2) years.

SECTION 4. *Organization Meeting.* Immediately after each annual meeting of members of the Association, the newly elected Board Members and those Board Members whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

SECTION 5. *Regular Meetings.* Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Board, but at least four such meetings shall be held during each fiscal year.

SECTION 6. *Special Meetings.* Special Meetings of the Board may be held at any time upon call by the President or any two Board members. Written notice of the time and place of each such meeting shall be given to each Board member either by personal delivery or by mail, telegram or telephone at least two (2) days before the meeting, which notice need not specify the purposes of the meeting; provided, however, that attendance of any Board member at any such meeting without protesting the lack of proper notice, prior to or at the commencement of the meeting, shall be deemed to be a waiver by him of notice of such meeting, and such notice may be waived in writing either before or after the holding of such meeting by any Board member, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organization, regular or special meeting except as provided herein.

SECTION 7. *Quorum; Adjournment.* A quorum of the Board shall consist of a majority of the Board of Directors then in office; provided that a majority of the Board members present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration or in these Bylaws.

SECTION 8. *Powers and Duties.* Except as otherwise provided by law, the Declaration or these Bylaws, all power and authority of the Association shall be exercised by the Board. In carrying out

the purposes of the Association and subject to the limitations prescribed by law, the Declaration and these Bylaws, the Board, for and on behalf of the Association, may:

- A. purchase or otherwise acquire, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer and dispose of property of any description or any interest therein;
- B. make contracts;
- C. effect insurance;
- D. borrow money, and issue, sell and pledge notes, bonds and other evidences of indebtedness of the Association;
- E. levy assessments against Unit Owners;
- F. employ a managing agent to perform such duties and services as the Board may authorize;
- G. employ lawyers and accountants to perform such legal and accounting services as the Board may authorize;
- H. take all action and authorize and direct the officers to execute all documents requested by Declarant to effectuate the exercise of its rights and powers under the Declaration, as amended from time to time; and
- I. do all things permitted by law and exercise all power and authority within the purposes stated in these Bylaws or the Declaration or incidental thereto.

**SECTION 9. *Removal of Members of Board.*** At any regular or special meeting of members of the Association duly called, at which a quorum shall be present, any one or more of the Board members, except the Board member(s), if any, designated by Kaiser Aetna as provided in Section 1 of this Article II, may be removed with or without cause by the vote of the members of the Association entitled to exercise at least seventy-five percent (75%) of the voting power of the Association, and a successor or successors to such Board member or members so removed shall then and there be elected to fill the vacancy or vacancies thus created. Any Board member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

**SECTION 10. *Fidelity Bonds.*** The Board may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate Fidelity Bonds. The premiums on such bonds shall be paid by the Association and shall be a Common Expense.

### **ARTICLE III. OFFICERS**

**SECTION 1. *Election and Designation of Officers.*** The Board shall elect a President, a Vice President, a Secretary and a Treasurer, each of whom shall be a member of the Board. The Board may also appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary who may or may not be members of the Board but who are members of the Association.

**SECTION 2. *Term of Office; Vacancies.*** The officers of the Association shall hold office until the next organization meeting of the Board and until their successors are elected, except in case of resignation, removal from office or death. The Board may remove an officer at any time with or without cause by a majority vote of the Board members then in office. Any vacancy in any office may be filled by the Board.

SECTION 3. *President.* The President shall be the chief executive officer of the Association. He shall preside at all meetings of members of the Association and shall preside at all meetings of the Board. Subject to directions of the Board, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts and other obligations of the Association, and shall have such other authority and shall perform such other duties as may be determined by the Board or otherwise be provided for in the Declaration or in these Bylaws.

SECTION 4. *Vice President.* The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board.

SECTION 5. *Secretary.* The Secretary shall keep the minutes of meetings of the members of the Association and of the Board. He shall keep such records as may be required by the Board, shall give notices of meetings of members of the Association and of the Board required by law, the Declaration or by these Bylaws, and shall have such authority and shall perform such other duties as may be determined by the Board or otherwise be provided for in the Declaration or in these Bylaws.

SECTION 6. *Treasurer.* The Treasurer shall receive and have in charge all money, bills, notes and similar property belonging to the Association, and shall do with the same as may be directed by the Board. He shall keep accurate current financial books of account, and hold the same open for the inspection and examination of the Board upon its request at all reasonable times, and shall have such authority and shall perform such other duties as may be determined by the Board.

SECTION 7. *Other Officers.* The Assistant Secretaries and Assistant Treasurers, if any, and any other officers whom the Board may appoint shall, respectively, have such authority and perform such duties as may be determined by the Board.

SECTION 8. *Delegation of Authority and Duties.* The Board is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

SECTION 9. *Insurance.* The Board may obtain liability and indemnification insurance in favor of the Board of Directors, officers and employees in the performance of their duties in such amount as the Board may deem appropriate. The premiums on such insurance shall be paid by the Association and shall be a Common Expense. Such insurance shall be in addition to the provisions of Article VII, Section 1 hereof.

#### ARTICLE IV. COMMITTEES

SECTION 1. The Board of Directors shall appoint a Nominating Committee and may appoint an Architectural Control Committee. In addition, the Board of Directors shall appoint such other committees as it deems appropriate in carrying out its purposes, such as:

(a) A Recreation Commission which shall advise the Board of Directors on all matters pertaining to the recreational program, facilities and activities of the Association, if any, and shall perform such other functions as the Board may determine in its discretion;

(b) A Maintenance Committee which shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the properties, and which shall perform such other functions as the Board in its discretion may determine;

(c) A Publicity Committee which shall inform the members of all activities and functions of the Association and which shall, after receiving approval of the Board of Directors, make such public releases and announcements as are in the best interests of the Association;

(d) An Audit Committee which shall review the annual financial statements of the Association's fiscal condition and approve the annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting; and the Treasurer shall be an ex officio member of such a committee if it be created by the Board.

SECTION 2. It shall be the duty of each committee to receive complaints from members on any matters involving Association functions, facilities, duties and activities within its field of responsibility. It shall dispose of such complaints as it deems appropriate or offer them to such other committee, Director or officer of the Association as is further concerned with the matter presented. Provided, however, that the Board of Directors shall retain ultimate control, authority and responsibility and that the Board shall have the authority to reverse or override any action of any committee.

## ARTICLE V. GENERAL POWERS OF THE ASSOCIATION

SECTION 1. *Common Expenses.* The Association, for the benefit of all the Unit Owners, shall pay all Common Expenses arising with respect to, or in connection with, the property covered by the Declaration, including, without limitation, the following:

A. *Utility Service for Common Areas and Facilities.* The cost of water, waste removal, electricity, telephone, heat, power or any other utility service for the Common Areas and Facilities excluding the Limited Common Areas and Facilities. Upon determination by the Board that any Unit Owner is using excessive amounts of any utility services which are Common Expenses, the Association shall have the right to levy special assessments against such Unit Owner to reimburse the Association for the expense incurred as a result of such excessive use.

B. *Casualty Insurance.* The premium upon a policy or policies of Casualty Insurance insuring the individual units, Common Areas and Facilities, with extended coverage, vandalism and malicious mischief endorsements, as provided in the Declaration, the amount of which insurance shall be reviewed annually.

C. *Liability Insurance.* The premium upon policy or policies insuring the Association, the members of the Board, the Unit Owners and the Occupants against liability for personal injury, disease, illness or death or for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas and Facilities, as provided in the Declaration, the limits of which policy shall be reviewed annually by the Board.

D. *Workmen's Compensation.* Workmen's compensation insurance to the extent necessary to comply with any applicable laws.

E. *Wages and Fees for Services.* The wages and/or fees for services of any person or firm employed by the Association, including, without limitation, the services of a person or persons to act as a manager or managing agent for the property, the services of any person or persons required for the maintenance or operation of the property (including a recreation director or other personnel, if any), and legal and/or accounting services necessary or proper in the operation of the property or the enforcement of the Declaration and these Bylaws and for the organization, operation and enforcement of the rights of the Association.

F. *Care of Common Areas and Facilities.* The cost of landscaping, gardening, snow removal, painting, cleaning, tuckpointing, maintaining, decorating, repairing and replacing of the Common Areas and Facilities, excluding the Limited Common Areas and Facilities; provided, however, structural maintenance and repair to garages (which are defined as Limited Common Areas and Facilities) shall be the responsibility of the Association unless such maintenance or repair is caused by the Unit Owner, in which case he shall be responsible.



*G. Additional Expenses.* The cost of any materials, supplies, furniture, labor, services, maintenance, repairs, replacements, structural alterations and insurance which the Association is required to secure or pay for pursuant to the terms of the Declaration and these Bylaws or by law or which the Association deems necessary or proper for the maintenance and operation of the property covered by the Declaration as a first-class project or for the enforcement of the Declaration and these Bylaws.

*H. Discharge of Mechanic's Liens.* Any amount necessary to discharge any mechanic's lien or other encumbrance which may in the opinion of the Association constitute a lien against the property or against the Common Areas and Facilities, rather than merely against the interests therein of such Unit Owner responsible for the existence of such lien or encumbrance; provided, however, that the Association shall levy a special assessment against such Unit Owner to recover the amount expended in discharging such lien or encumbrance.

*I. Certain Maintenance of Units.* The cost of the maintenance and repair of the Limited Common Areas and Facilities and of any Unit, if such maintenance or repair is necessary, in the discretion of the Association, to prevent damage to or destruction of any part of the Common Areas and Facilities or any other Unit, and the Unit Owner having the exclusive right to use such Limited Common Areas and Facilities or owning such Unit requiring such maintenance or repair shall have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said Unit Owner; provided, however, that the Association shall levy a special assessment against such Unit Owner to recover the amount expended for such maintenance or repair.

**SECTION 2. Association's Right to Enter Units.** The Association or its agents may enter any Unit or portion of the Limited Common Areas and Facilities when necessary in connection with any maintenance, repair or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Unit Owner as practicable, and any damage caused thereby shall be repaired by the Association. Such right of entry shall only be exercised upon presentation of written notice to the individual Unit Owner; provided, however, if the Unit Owner does not comply with such written notice at the time when required alterations or repairs are scheduled, or in the event of any emergency originating in or threatening any Unit, the managing agent or his representative or any other person designated by the Board may enter the Unit immediately whether the Unit Owner is present or not.

**SECTION 3. Capital Additions and Improvements.** Whenever in the judgment of the Board the Common Areas and Facilities shall require additions, alterations or improvements (as opposed to maintenance, repair and replacement) costing in excess of \$5,000 in any fiscal year, and the making of such additions, alterations or improvements shall have been approved by Unit Owners entitled to exercise not less than a majority of the voting power, the Board shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a Common Expense. Any additions, alterations or improvements costing \$5,000 or less in any fiscal year may be made by the Board without approval of the Unit Owners and the cost thereof shall constitute a Common Expense.

**SECTION 4. Rules and Regulations.** The Association, by vote of the members entitled to exercise a majority of the voting power of the Association, or the Board, may adopt such reasonable Rules and from time to time amend the same as it or they may deem advisable for the maintenance, conservation and beautification of the property and for the health, comfort, safety and general welfare of the Unit Owners and Occupants. Written notice of such Rules shall be given to all Unit Owners and Occupants and the Property shall at all times be maintained subject to such Rules. In the event such Rules shall conflict with any provisions of the Declaration or of these Bylaws, the provisions of the Declaration and of these Bylaws shall govern.

SECTION 5. *Special Services.* The Association may arrange for special services and facilities for the benefit of such Unit Owners and Occupants as may desire to pay for the same, including, without limitation, the cleaning, repair and maintenance of Units and special recreational, education or medical facilities. The cost of any such special services or facilities shall be determined by the Association and may be charged directly to participating Unit Owners as a special assessment or paid by the Association as a Common Expense, in which case a special assessment shall be levied against such participating Unit Owners to reimburse all costs to the Association therefor.

SECTION 6. *Delegation of Duties.* Nothing herein contained shall be construed so as to preclude the Association, through its Board and officers, from delegating in accordance with the Declaration, to persons, firms or corporations, including any manager or managing agent, such duties and responsibilities of the Association as the Board shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

## ARTICLE VI. FINANCES OF ASSOCIATION

SECTION 1. *Preparation of Estimated Budget.* Each year on or before December 1, the Association shall estimate the total amount necessary to pay all the Common Expenses for the next calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15 notify each Unit Owner in writing as to the amount of such estimate, with reasonable itemization thereof. The "estimated cash requirement" shall be assessed to the Unit Owners at a uniform rate for all similar units. On or before January 1 of the ensuing year, and the first of each and every month of said year, each Unit Owner shall be obligated to pay to the Association or as it may direct one-twelfth (1/12) of the assessment made pursuant to this Article VI, Section 1. On or before the date of each annual meeting, the Association shall supply to all Unit Owners an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited uniformly for all similar units to the next monthly installments due from Unit Owners under the current year's estimate, until exhausted, and any net shortage shall be added uniformly for all similar units to the installments due in the succeeding six months after rendering the accounting.

SECTION 2. *Extraordinary Expenditures.* If the "estimated cash requirement" proves inadequate for any reason, including nonpayment of any Unit Owner's assessment, such extraordinary expenditures shall be assessed to the Unit Owners uniformly for all similar units. The Association shall serve notice of such further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall be payable with the next regular monthly payment becoming due to the Association not less than ten (10) days after the delivery or mailing of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted monthly amount. The Association may at the discretion of the Board of Directors build up and maintain a reasonable reserve for contingencies and replacements. In this event extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall then be charged first against such reserve.

SECTION 3. *Budget for First Year.* When the first Board elected hereunder takes office, the Association shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31 of the calendar year in which said election occurs. Assessments shall be levied against and paid by, the Unit Owners during said period as provided in Section 1 of this Article VI.

SECTION 4. *Failure to Prepare Annual Budget.* The failure or delay of the Association to prepare or deliver to the Unit Owner the annual or adjusted estimate shall not constitute a waiver or release

in any manner of such Unit Owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate the Unit Owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period until the next monthly maintenance payment is due provided such new annual or adjusted estimate shall have been mailed or delivered ten (10) days or more prior thereto.

**SECTION 5. *Books and Records of Association.*** The Association shall keep full and correct books of account and the same shall be open for inspection by any Unit Owner or his representative duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by such Unit Owner. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Unit Owner to the Association.

**SECTION 6. *Status of Funds Collected by Association.*** All funds collected hereunder shall be held and expended solely for the purposes designated herein, and except for such special assessments as may be levied hereunder against less than all of the Unit Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments, shall be deemed to be held for the use, benefit and account of all of the Unit Owners in proportion to each Unit Owner's percentage ownership in the Common Areas and Facilities.

**SECTION 7. *Annual Audit.*** The books of the Association shall be audited once a year by the Board and such audit shall be completed prior to each annual meeting. If requested by three members of the Board, such audit shall be made by a Certified Public Accountant. In addition and at any time so requested by ten (10%) percent of the Unit Owners or by Declarant, the Board shall cause an additional audit to be made.

**SECTION 8. *Security Deposits from Certain Unit Owners.*** If in the judgment of the Board, the equity of the persons owning the Ownership Interest in any Unit at anytime is not sufficient to assure payment (whether by foreclosure of the lien in favor of the Association, or otherwise) of all assessments, charges or other sums which may be levied by the Association, then whether or not such Unit Owner shall be delinquent in the payment of such levies, the Association shall have the right to require such Unit Owner to pay to the Association a security deposit in an amount which the Board deems necessary for such purposes, provided, however, that such security deposit shall in no event exceed an amount which, when added to such Unit Owner's equity interest in his Unit, will exceed twenty-five percent (25%) of the purchase price of the Unit in question. In the event that any Unit Owner shall fail to pay any assessments, charges or other sums which may be due hereunder or shall otherwise violate any covenants, terms and conditions of the Declaration or of these Bylaws, the Association shall have the right, but not the obligation, to apply such security deposit in reduction of its alleged damages resulting from such failure or violation, which right shall be in addition to all other remedies provided for in the Declaration or these Bylaws. Upon any sale by such Unit Owner of his Unit, or at such time as such Unit Owner's equity in his Unit is sufficiently great to dispense with the necessity of such security deposit, any unapplied balance of said security deposit remaining to the credit of said Unit Owner shall be refunded, provided that such Unit Owner shall not be in default under any of his obligations under the Declaration or these Bylaws. The Association shall have the right to maintain all security deposits held by it as aforesaid in a single bank account and shall not be required to credit interest thereon to any Unit Owner; such interest, if any, to be paid to and retained by the Association for its purposes as provided herein. Said security deposit shall at all times be subject and subordinate to the lien in favor of the Association as described in the Declaration and all rights thereto shall inure to the benefit of the Association.



## ARTICLE VII. GENERAL PROVISIONS

SECTION 1. *Indemnification of Board Members and Officers.* Each Board member and officer of the Association, and each former Board member and officer of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by him in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which he is or may be made a party by reason of his being or having been such Board member or officer of the Association (whether or not he is a Board member or officer at the time of incurring such costs and expenses), except with respect to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for misconduct or negligence in the performance of his duty as such Board member or officer. In case of the settlement of any action, suit or proceeding to which any Board member or officer of the Association, or any former Board member or officer of the Association, is made a party or which may be threatened to be brought against him by reason of his being or having been a Board member or officer of the Association, he shall be indemnified by the Association against the costs and expenses (including the cost of settlement) reasonably incurred by him in connection with such action, suit or proceeding (whether or not he is a Board member or officer at the time of incurring such costs and expenses), if (A) the Association shall be advised by independent counsel that such Board member or officer did not misconduct himself or was not negligent in the performance of his duty as such Board member or officer with respect to the matters covered by such action, suit or proceeding, and cost to the Association of indemnifying such Board member or officers (and all other Board members and officers, if any, entitled to indemnification hereunder in such case) if such action, suit or proceeding were carried to a final adjudication in their favor could reasonably be expected to exceed the amount of costs and expenses to be reimbursed to such Board members and officers as a result of such settlement, or (B) disinterested Association members entitled to exercise a majority of the voting power shall, by vote at any annual or special meeting of the Association, approve such settlement and the reimbursement to such Board member or officer of such costs and expenses. The phrase "disinterested members" shall mean all members of the Association other than (i) any Board member or officer of the Association who at the time is or may be entitled to indemnification pursuant to the foregoing provisions, (ii) any corporation or organization of which any such Board member or officer owns of record or beneficially 10% or more of any class of voting securities, (iii) any firm of which such Board member or officer is a partner, and (iv) any spouse, child, parent, brother or sister of any such Board member or officer. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such Board member or officer, and shall not be exclusive of other rights to which any Board member or officer may be entitled as a matter of law, under the Declaration, any vote of Association members or any agreement.

SECTION 2. *Amendments.* These Bylaws may be amended, at any regular or special meeting of the Unit Owners, by vote of a majority of a quorum of Unit Owners present in person or by proxy, or by resolution duly executed by a majority of the Unit Owners, except as otherwise provided herein.

SECTION 3. *Conflict.* In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

SECTION 4. *Corporate Seal.* The Association shall have a corporate seal, in circular form, having within its circumference the words, "The Villages of Overland View Homes Association, Inc., Kansas, Corporate Seal."



SECTION 5. *Real Property Taxation.* Each Unit and its interest in the common areas shall be deemed to be a separate parcel for all purposes of taxation and assessment of real property, and no other unit shall be charged with the payment of such taxes and assessments.

IN WITNESS WHEREOF, we, being all of the Directors of the above named Association, have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 1973.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_