

**DECLARATION OF COVENANTS,  
RESTRICTIONS,  
ASSESSMENTS AND EASEMENTS OF ST.  
JAMES COURT**

## DECLARATION INDEX

<b><u>ITEM</u></b>	<b><u>PAGE</u></b>
DECLARATION	1
Recitals    1	
Definitions	1
The Plan	3
ARTICLE I – THE LAND	3
ARTICLE II – NAME	3
ARTICLE III –PURPOSES; RESTRICTIONS	
<i>(As amended in 2003 by the 2<sup>nd</sup> Amendment to SJC Covenants)</i>	3
Section 1. Purposes	3
Section 2. Restrictions	3
(a) Unit Uses	3
(b) Common Areas Uses	4
(c) Visible Areas	4
(d) Offensive Activities; Trash	5
(e) Garages and Vehicles	6
(f) Renting and Leasing	6
(g) Signs    7	
(h) Maintenance and Replacement	7
(i) Structural Integrity	7
(j) Construction in Easements	7
(k) Animals 7	
(l) Conveyances	8
(m)Discrimination/Handicapped Accommodation	8
(n) Landscaping	8
(o) Architectural Control	8
(p) Rules and Regulations	9
(q) Fines and Other Enforcement	9
ARTICLE IV – IMPROVEMENT DESCRIPTIONS	9
Section 1. Residential Buildings	9
Section 2. Common Areas	9

ARTICLE V – UNITS	9
<i>(As amended in 2003 by the 2<sup>nd</sup> Amendment to SJC Covenants)</i>	
Section 1. Unit Designations	9
Section 2. Composition of Units	10
(a) Unit Composition	10
(b) Unit Types, Sizes, Locations and Components	10
Section 3. Party Walls	10
ARTICLE VI – COMMON AREAS	11
Section 1. Common Areas - General Description	11
Section 2. Undivided Interest in Common Areas	11
ARTICLE VII – HOMEOWNERS ASSOCIATION	11
<i>(As amended in 2003 by the 2<sup>nd</sup> Amendment to SJC Covenants)</i>	
Section 1. Establishment of Association	11
Section 2. Membership and Voting Rights	11
Section 3. Board of Directors	12
Section 4. Authority of Board	12
Section 5. Delegation of Authority; Management Contracts	14
ARTICLE VIII – MAINTENANCE AND REPAIR	14
<i>(As amended in 2003 by the 2<sup>nd</sup> Amendment to SJC Covenants)</i>	
Section 1. Association Duties and Responsibilities	14
Section 2. Individual Responsibilities	15
ARTICLE IX – UTILITY SERVICES	16
ARTICLE X – INSURANCE; LOSSES	16
<i>(As amended in 2003 by the 2<sup>nd</sup> Amendment to SJC Covenants)</i>	
Section 1. Fire and Extended Coverage Insurance	16
Section 2. Liability Insurance	17
Section 3. Fidelity Coverage	18
Section 4. Hazard Insurance Carrier	18
Section 5. Other Association Insurance	18
Section 6. Nominee; Power of Attorney	18
Section 7. Unit Owners’ Insurance	18
Section 8. Sufficient Insurance	19
Section 9. Insufficient Insurance	19
Section 10. Election Not to Restore	19

ARTICLE XI – GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS	20
Section 1. Easements of Enjoyment; Limitations	20
Section 2. Right of Entry for Repair, Maintenance and Restoration	20
Section 3. Easements for Encroachments	20
Section 4. Easement for Support	20
Section 5. Easements for Proper Operations	20
Section 6. Easement for Services	21
Section 7. Easements Reserved to Declarant	21
Section 8. Power of Attorney	21
Section 9. General	21
ARTICLE XII –ASSESSMENTS AND ASSESSMENT LIENS; RESERVE FUNDS	22
<i>(As amended in 2003 by the 2<sup>nd</sup> Amendment to SJC Covenants)</i>	
Section 1. Types of Assessments	22
Section 2. Purpose of Assessments	22
Section 3. Elements-Appportionments; Due Dates	22
(a) Annual Operating Assessments Payable Monthly	22
(b) Special Assessments for Capital Improvements	24
(c) Special Individual Unit Assessments	25
(d) Defense of Claims	25
Section 4. Effective Date of Assessment	25
Section 5. Effect of Nonpayment of Assessment; Remedies of the Association	25
Section 6. Subordination of the Lien to First Mortgages	27
Section 7. Certificate Regarding Assessments	27
Section 8. Contribution to Reserves Upon Sale of Units	27
Section 9. Initial Casualty Insurance	28
ARTICLE XIII – CONDEMNATION	28
ARTICLE XIV – TOWNHOME INSTRUMENT REQUIREMENTS	28
Section 1. Association Control	28
Section 2. Declarant’s Obligations	29
Section 3. Unit Owners’ Rights and Obligations	29
ARTICLE XV – AMENDMENTS	29
Section 1. Power to Amend	29
Section 2. Method to Amend	29
Section 3. Form of Consent of Owners	30
ARTICLE XVI – GENERAL PROVISIONS	30
Section 1. Covenants Running With the Land	30
Section 2. Enforcement	30
Section 3. Severability	31
Section 4. Gender and Grammar	31



**DECLARATION OF COVENANTS,  
RESTRICTIONS, ASSESSMENTS AND EASEMENTS  
OF ST. JAMES COURT**

This is the Declaration of Covenants, Restrictions, Assessments and Easements of St. James Court, pursuant to the provisions of K.S.A. §§58-3701 *et seq.* (the “Townhome Act”).

**Recitals**

- A. St. James Court, L.L.C., a Kansas limited liability company (“Declarant”), is the owner in fee simple of all of the real property hereinafter described as the “Townhome Property” and the improvements thereon and appurtenances thereto.
- B. The Declarant desires to create of this property a site of individually owned townhome units and commonly owned areas and facilities, and to these ends to submit this property to the provisions of the Townhome Act.

**Definitions**

The terms used in this document shall have these meanings, unless the context requires otherwise:

“Articles” and “Articles of Incorporation” mean the articles of incorporation, filed with the Secretary of State of Kansas, incorporating the Association as a Kansas not-for-profit corporation, as amended from time to time.

“Association” means the entity created by the filing of the Articles and is also one and the same as the association required for the Townhome under the Townhome Act.

“Board” and “Board of Directors” mean those persons who, as a group, serve as the board of directors of the Association.

“Bylaws” means the bylaws of the Association, as amended from time to time.

“City” means the City of Olathe, Kansas.

“Common Areas” means all of the Townhome Property, except each portion described in this Declaration as constituting a Unit or Units, and is that portion of the Townhome Property constituting “common areas and facilities” of the Townhome under the Townhome Act and which are to be owned in fee simple by the Association, as further described in Article VI, Section 1.

“Completed Units” means a Unit where the residence is substantially completed and for which a temporary or permanent certificate of occupancy has been issued by the City.

“Declarant” means St. James Court, L.L.C., a Kansas limited liability company, and its successors and assigns.

“Declaration” means this instrument, by which the Townhome Property is hereby submitted to the provisions of the Townhome Act and the Townhome Property is subjected to the covenants, restrictions, assessments and easements set forth herein.

“Lot” means any lot or subdivision or split thereof as shown as a separate building lot on any recorded Plat of all or part of the Townhome Property upon which a single townhome residence has been or will be constructed.

“Occupant” means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit owner.

“Person” means an individual, corporation, partnership, limited liability company, trust, or other legal entity capable of holding title to real property.

“Plats” means the plats, plats of survey, certificates of survey, or replats of various parts of the Townhome Property filed from time to time with the Recording Office, as required or permitted by the Townhome Act.

“Recording Office” means the Office of the Register of Deeds of Johnson County, Kansas.

“Townhome” means the Townhome regime for the Townhome Property created by this Declaration under and pursuant to the Townhome Act.

“Townhome Act” means K.S.A. §§58-3701, *et seq.*, which is commonly known as the Kansas Townhouse Ownership Act.

“Townhome Instruments” means this Declaration, the Articles, the Bylaws, the Plats, and all rules and regulations adopted by the Board from time to time in accordance with this Declaration or the Bylaws.

“Townhome Property” means the tract of land hereinafter described as being submitted to the Townhome Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto. The term may also include an additional adjoining tract of land which may be acquired in the future. The Townhome Property is legally described in Exhibit A attached hereto.

“Turnover Date” means the earlier of (i) the date as of which 90% of all of the Units (as then composed or contemplated by the Declarant) have been sold and a deed thereto delivered by

the Declarant, or (ii) the date the Declarant, in its absolute discretion, selects as the Turnover Date for this Declaration.

“Unit” means collectively a Lot and the townhome residence built or to be built thereon, being that portion or portions of the Townhome Property constituting a “townhouse unit” or “units” of the Townhome under the provisions of the Townhome Act.

“Unit owner” and “Unit owners” mean that person or those persons owning a Unit in fee simple.

### **The Plan**

NOW, THEREFORE, Declarant hereby subjects all of the Townhome Property to the covenants, restrictions, assessments and easements hereinafter set forth and hereby submits the Townhome Property to the provisions of the Townhome Act and makes and establishes the following plan for the Townhome Property.

## **ARTICLE I**

### **THE LAND**

The legal description of the land constituting the Townhome Property, located in the City of Olathe, Johnson County, Kansas, is attached hereto as Exhibit A.

## **ARTICLE II**

### **NAME**

The name by which the Townhome shall be known is “St. James Court”.

## **ARTICLE III**

### **PURPOSES; RESTRICTIONS**

1. Purposes. This Declaration is being made to establish separate individual parcels from the Townhome Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of Units and the Common Areas and the well being of Unit owners and occupants; and to establish a “Unit owners” association to administer the Townhome and the Townhome Property, to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth, and to raise funds through assessments to accomplish these purposes.



2. Restrictions. The Townhome and the Townhome Property shall be benefited by and subject to the following restrictions:

- (a) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be the right of Declarant to maintain, during the period of its sale or rental of Units, (A) one or more Units as sales and rental models and offices, and for storage and maintenance purposes, and (B) such portions of the Townhome Property as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction or sale of Unit(s) or the Townhome Property, including, without limitation, the maintenance of a construction and/or sales trailer, which right may not be limited or revoked without the specific consent of Declarant; and (iii) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.
- (b) Common Areas Uses. The Common Areas shall be used in common by all Unit owners and occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit owners and occupants.
- (c) Visible Areas.
  - (i) Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, except for seasonable decorations in compliance with any rules and regulations adopted by the Board and except for interior drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige or gray, or as otherwise authorized by the Declarant or the Board. Small flag poles attached to house are permitted.
  - (ii) No awning, canopy, shutter, window air conditioning unit or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or the Declarant.

- (iii) No outside antenna, satellite dish, or other device for the reception or transmission of radio or television or other electronic signals shall be erected or maintained on any Lot or upon the exterior of any Unit, without prior written approval of the Board or the Declarant, and then only in such places and under such conditions as are expressly authorized by the Board or the Declarant. The Board and the Declarant shall have the power to limit the size of the device and require such specific areas and methods of placement of any such device as it deems appropriate in order to render the installation as inoffensive as possible to other owners and occupants. In the event these limitations, or any part thereof, are deemed unlawful, the Board and the Declarant reserve the right to regulate the placement of such devices in a manner not in violation of the law.
- (iv) No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except voice intercoms and devices used exclusively for security purposes.
- (v) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard. No vegetable gardens shall be permitted. No bird baths, statues or other lawn art shall be permitted on the exterior of any residence or in any yard without the prior written consent of the Board or as may be permitted by rules and regulations adopted by the Board. No lawn art may obstruct or interfere with the maintenance activities of the Association and the Association and its contractors shall have absolutely no liability with respect to any damage to any lawn art caused by such maintenance activities.
- (vi) No lights or other illumination (other than street lights) shall be higher than the residence. Exterior holiday lights shall be permitted only between November 15 and January 31. Except for such holiday lights, all exterior lighting shall be white and not colored. All exterior landscape lighting must be approved in advance by the Board of Declarant.
- (vii) No shed, barn, detached greenhouse or outbuilding, basketball goal or court or other sports court of any kind, animal run, trampoline, playhouse or any other play structure, treehouse, batting cage, tennis court, swimming pool or clothesline shall be erected upon, moved onto or maintained upon any Lot. Any animal house must be located within the fenced-in patio area of the Unit. No area below a deck may be enclosed.
- (viii) No garage sales, sample sales or similar activities shall be held other than as a part of a neighborhood event approved by the Board.
- (ix) No fences shall be permitted on any Lot, except as may be constructed around a patio with the express written consent of the Declarant or the Association and except for the project perimeter fencing installed by or for the Declarant.

- (x) No sign shall be placed or maintained in any Common Area without the approval of the Board or Declarant.
- (d) Offensive Activities; Trash. No noxious or offensive activity shall be carried on with respect to any Unit, or upon the common Areas, nor shall any Unit or Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant. No outdoor burning of trash, grass or construction material shall be allowed on any Lot, except as authorized by the Declarant. No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection. The Declarant shall have the right to maintain construction dumpsters at locations selected by it.
- (e) Garages and Vehicles.
  - (i) Garage doors shall remain closed at all times reasonable except when necessary for vehicle ingress and egress.
  - (ii) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.
  - (iii) Overnight parking of motor vehicles, trailers or similar apparatus of any type or character in Common Areas (other than designated off-street parking areas) or on any street is prohibited. No vehicle (other than an operable passenger automobile, passenger van, sports utility vehicle or small truck), commercial truck or van, bus, boat, trailer, camper, mobile home, or similar apparatus shall be left or stored overnight in the Townhome Property, except in an enclosed garage or as permitted in clause (v) below. No motor vehicle shall be parked in any designated off-street parking area or any driveway for more than 48 consecutive hours.
  - (iv) Trucks or other vehicles with gross vehicle weight of 12,000 pounds or over are prohibited in the Townhome Property except during such limited time as such truck or vehicle is actually being used during working hours within the Townhome Property for its specific purpose.
  - (v) Recreational motor vehicles of any type or character are prohibited except:
    - (1) Storing in an enclosed garage;
    - (2) Temporary parking on the driveway for the purpose of loading and unloading (maximum of one overnight every 14 days); or
    - (3) With prior written approval of the Board.

- (f) Renting and Leasing. No Unit or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental of less than one month duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. Any lease agreement shall be in writing, shall require that the tenant and other occupants comply with all provisions of the Townhome Instruments, shall provide that the lease shall be subject in all respects to the provisions of the Townhome Instruments, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Townhome Instruments shall be a default under the lease. Prior to the commencement of the term of a lease the Unit owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect and provide the Board with a copy of the lease. Notwithstanding the existence of a lease, the Unit owner shall remain liable for all obligations, including, without limitation, the payment of dues, fines and enforcement charges, under this Declaration with respect to the Unit.
- (g) Signs. No sign of any kind shall be displayed to the public view on the Townhome Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, provided they are approved by the Board; (b) on the Common Areas and model Units, signs advertising the sale and/or rental of Units by the Declarant during the period of its initial sale and rental of Units; or (c) with the specific written approval of the Board. No other “for sale” or “for lease” signs shall be permitted. One political sign per candidate or issue, not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election. If these limitations on the use of signs, or any part thereof, are determined to be unlawful, the Board reserves the right to regulate the use of signs in a manner not in violation of law.
- (h) Maintenance and Replacements. Except for the specific items listed as an Association responsibility in Article VIII, Section 1, each Unit owner shall properly maintain the owner’s Unit in a neat, clean and orderly fashion and in good condition and repair at all times. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason shall be for the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Board. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.
- (i) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Areas, which may impair the structural integrity of any improvement.

- (j) Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.
- (k) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations, which may include a fining policy for violators covered by (q), as the Board may from time to time promulgate, including, without limitation, restrictions on the size, number and type of such pets; and (ii) the right of an owner or occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Townhome or other Units or occupants. All pets shall be confined to the Lot of the Owner except when on a leash controlled by a responsible person. Owners shall immediately clean up after their pets on all streets, Common Areas, areas owned by others and their own Lot.
- (l) Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) as a separately designated and legally described fee simple estate subject to the terms, conditions and provisions hereof. The rights in the Common Areas shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Area by referring to the Lot designation of the Unit on the relevant Plat and the appropriate recording references of the initial page of this Declaration. Failure to include a reference to this Declaration in any deed shall neither invalidate any such transfer nor relieve the Unit from being subject to this Declaration. The right of a Unit owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal, and any Unit owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit owners, each Unit owner agrees to notify the Association, in writing, within five days after an interest in that Unit owner's Unit has been transferred to another person. In addition, each Unit owner agrees to provide to a purchaser of that owner's Unit a copy of all Townhome Instruments.

- (m) Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit owner in favor of another. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board shall make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Common Areas, provided, that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association.
- (n) Landscaping. No landscaping (other than trees and landscaping installed by or for the Declarant or the Association and flowers installed by the Unit owner) shall be installed or maintained in any yard or next to any residence, without the express written consent of the Declarant or the Board.
- (o) Architectural Control. Following the completion of construction of any Unit, no significant landscaping change or any exterior addition or alteration shall be made thereto unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board. However, no such approval of the Board shall be required for the Declarant to construct the Units and Common Areas.
- (p) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit owners, as a whole, and the Association, and to protect and preserve the nature of the Townhome and the Townhome Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.
- (q) Fines and Other Enforcement. The Board may enforce all of the foregoing restrictions, rules and regulations by levying fines and other enforcement charges, having vehicles, trailers or other apparatus towed away at the expense of the owner, and/or taking such other lawful actions as the Board, in its sole discretion, deems appropriate.

## **ARTICLE IV**

### **IMPROVEMENT DESCRIPTIONS**

1. Residential Buildings. There will be up to 44 residential buildings, each containing 4 Units, making a total of up to 176 Units on the initial parcel of real property included in the Townhome Property. The residential buildings are of traditional architectural style, of one or two stories, with basements, and two car garages. These buildings are of wood frame construction, with brick, stone or stucco siding, and composition shingle roofs. The principal materials of which these buildings are constructed are wood, glass, concrete, brick,

composition shingle, and drywall. The residential buildings and Units are and will be located as shown on the Plats. Each Unit will have a private exterior entrance.

2. Common Areas. The Common Areas will include entry monuments and related landscaping, lighting, water sprinkler systems and a common water sprinkler system for the Lots. Declarant shall have the right to add and designate additional Common areas from time to time in its discretion.

## ARTICLE V

### UNITS

1. Unit Designations. Each of the dwelling units, each of which is called a “Unit”, is or will be designated by a Lot number shown on the Plat on which that Unit is located.
2. Composition of Units.
  - (a) Unit Composition. Each Unit constitutes a single fee simple estate and consists of real estate within the boundaries designated for that Unit on the Plat, and all improvements, located thereon. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:
    - (i) the portion of the building and improvements located within the boundaries of the Lot;
    - (ii) all fixtures and appliances installed for the exclusive use of that Unit, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, microwaves, television antennas and cables, gas furnaces, hot water heaters, heat pumps, and/or air conditioning units (even though located outside the boundaries of the Unit), and components of the foregoing, if any.
    - (iii) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; and
    - (iv) the driveway, lawn, and landscaping within the Lot boundary.
  - (b) Unit Types, Sizes, Locations and Components. All Units are of the general categories or types as designated by Declarant. Each Unit has its own furnace, hot water heater, and a fireplace.
3. Party Walls. Each wall which is built as a part of the original construction of the Units upon the Townhome Property and placed on the dividing line between two or more Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence and willful acts or omissions shall apply thereto.
  - (a) The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Unit owners who make use of the wall in proportion to such use.



- (b) Notwithstanding any other provision of this Declaration, any Unit owner who by his, her or its negligence or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.
- (c) The right of any Unit owner to contribution from any other Unit owner with respect to the obligations relating to party walls shall be considered an appurtenant right and pass to any and all successors in interest to the title of such Unit.
- (d) The boundary line between Units which share a party wall is and shall be deemed to be the center line of the wall regardless of the actual location of the platted boundary line.

## **ARTICLE VI**

### **COMMON AREAS**

1. Common Areas - General Description. All of the Townhome Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described in this Declaration or on the Plats as a part of a Unit, are Common Areas. The Common Areas are also described, in part, in Section 2 of Article IV.
2. Undivided Interest in Common Areas. The Common Areas shall be owned by the Association, but each Unit shall be deemed to have an undivided interest in the Common Areas and in the “common expenses” as allocated among all of the Completed Units on an equal basis per Completed Unit. No Unit owner may waive or release any rights in the Common Areas or any liability for common expenses. Further, the rights in the Common Areas shall not be separated from the Unit to which it appertains.

## **ARTICLE VII**

### **HOMEOWNERS ASSOCIATION**

1. Establishment of Association. The Association has been formed to be and to serve as the Unit owners’ association of the Townhome. The Declarant is presently the sole member of the Association.
2. Membership and Voting Rights. Until the Turnover Date, the Association shall have two classes of membership, namely Class A and Class B. The Declarant shall be the sole Class A member. Each owner of a Unit, including the Declarant as an owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on matters described in Article X, Section 10; Article XII, Section 3(a)(vii) and Article XV, Section 1 below.

After the Turnover Date, there shall be only one class of membership which shall consist of the owners of the Units and every such owner shall be a member. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of ownership of a Unit shall automatically transfer membership to the transferee.

Where voting rights exist based on Unit ownership, each member shall have one vote for each Unit for which he is the owner; provided, however, that when more than one person is an owner of any particular Unit, all such persons shall be members and the one vote for such Unit shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Unit.

Subject to the foregoing, the Association shall be the sole judge of the qualifications of each Unit owner to vote and their rights to participate in its meetings and proceedings.

The Board, from time to time, may suspend the right of a member to vote with respect to his, her, or its Unit for failure to pay assessments when due, or for failure to observe other of the terms of the Townhome Instruments pursuant to rules and regulations duly adopted by the Board from time to time.

3. Board of Directors. The Board initially shall be the one or more persons named as the initial Director(s) pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. As soon as possible after the Turnover Date, the Association shall hold a meeting of its members, and all Unit owners shall elect five Directors to replace all of those Directors earlier elected or designated by Declarant. The terms of the five Directors shall be staggered so that the terms of two or three of the Directors will expire and successors will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the Directors whose terms then expire shall be elected to serve two-year terms. Notwithstanding the foregoing, after the Turnover Date the members, by the vote of members exercising not less than a majority of the voting power of members, may, from time to time, change the number and terms of Directors, provided, that in any such event the terms of at least one-third of the Directors shall expire annually.

Notwithstanding the foregoing, Declarant shall have the right at any time to waive its right to select one or more Directors or to vote in an election of Directors.

4. Authority of Board. The Board shall have all authority to manage, maintain, insure, repair, replace, alter and improve the Common Areas and the exterior portions of the Units and assess and collect funds for the payment thereof, and to do all things, and exercise all rights provided by the Townhome Instruments, or the Townhome Act, that are not specifically reserved to Unit owners. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Association, acting through the Board, shall have the power and authority to do and perform

all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

- (a) To enforce, in the Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Units; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Association or other parties having the right to make such waivers, changes, release or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Association shall be paid out of the general funds of the Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Declarant or any Unit owner from enforcing any building, use or other restrictions in its or his own name.
- (b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.
- (c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Association, the Common Areas and the property within the Townhome Property.
- (d) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.
- (e) To enter into and perform agreements from time to time with the Declarant and other parties regarding the performance of services and matters benefiting both the Declarant and the Association and its members and the sharing of the expenses associated therewith, including, without limitation, the Sharing Agreement.
- (f) To enter into and perform agreements with the Declarant, other developers, other homes associations, and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the Townhome Property, and the sharing of expenses related thereto.
- (g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

- (h) To engage the services of a security guard or security patrol service.
  - (i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Townhome Property; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Townhome Property neat in appearance and in good order.
  - (j) To exercise any architectural, aesthetic or other control and authority given and assigned to the Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Townhome Property.
  - (k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines, including, without limitation, the establishment and collection of monetary fines and other enforcement charges for violations of this Declaration and such rules, regulations and guidelines.
  - (l) To engage the legal services of an attorney or law firm.
  - (m) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Association or this Declaration.
5. Delegation of Authority; Management Contracts. The Board may delegate all or any portion of its authority to a managing agent, which may be the Declarant or an affiliate of the Declarant. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on no more than thirty (30) days written notice; shall be terminable by either party without cause and without penalty, on not more than ninety (90) days written notice; shall not exceed one year unless renewed by agreement of the parties for successive one-year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing. The Association also shall have the authority to enter into contracts with Declarant or an affiliate of Declarant for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing.

## **ARTICLE VIII**

### **MAINTENANCE AND REPAIR**

1. Association Duties and Responsibilities. The Association shall:

- (a) maintain, repair and replace all improvements constituting a part of the Common Areas, all driveways shared between two or more units, (including, without limitation, the swimming pool and clubhouse), all trunk and branch utility lines, and all common sewer lines within the Townhome Property (including, without limitation, all sanitary sewer service lines from the applicable manhole to the entry point into the applicable building), and all mailboxes and mailbox stands;
- (b) provide for the periodic painting of exterior painted surfaces, the repair and replacement of roofs, and the cleaning, repair and replacement of gutters, of each Unit;
- (c) provide lawn care, consisting of mowing, edging, fertilizing and weed control of grass areas, trimming and replacement of all bushes, and trimming of all trees, whether in a Common Area or on a Lot, but such services shall not include the care of any areas in the fenced-in patio area of any Unit or in any other area made inaccessible to the Association;
- (d) provide and pay for the costs of spring start-up, winterization, and repair, maintenance and water for the use of a common lawn sprinkler system on the Lots;
- (e) provide snow clearing, but no ice removal, for the Public Streets and for driveways, front yard sidewalks and front porches (but not back patios) on the Lots as soon as possible when the accumulation reaches two (2) inches or more;
- (f) establish, maintain and expend reserve funds for the future repair and replacement of the Public Streets and other Common Areas, for the future repair and replacement of Units' gutters and roofs, and for the periodic painting of the pool and clubhouse and exterior painted surfaces, as described above; and
- (g) To the extent not provided as a service by any governmental authority, provide, one day per week, for the collection and disposal of rubbish and garbage from each Completed Unit subject to assessment. The Association, however, shall not be obligated to provide recycling services.

The Board, in its discretion, shall determine the scope and timing of the foregoing services and functions of the Association and shall determine the amounts of the foregoing reserves. The Board, in its discretion, may provide other exterior maintenance services for the Units that are not part of the required services described above.

Except to the extent that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair the interior of any Unit, or component thereof, or personal property within any Unit. Furthermore, the Association shall not have responsibility for the repair of any damage caused by the gross negligence or willful misconduct of a Unit owner or its family members, tenants, guests or contractors (which repair shall be the responsibility of the Unit owner).

2. Individual Responsibilities. Each Unit owner shall repair and maintain in good condition at all times the interior of the Unit, and all components thereof, owned by that Unit owner. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit owner shall include repair, maintenance and replacement of all appliances, all plumbing fixtures and electrical fixtures, and all windows, skylights, screens, garage doors, screen doors, and other doors, including the frames, sashes and jambs, and the hardware therefor. Except for those specific items listed as an Association responsibility in Article VIII, Section 1, each Unit owner shall repair and maintain in good condition at all time the exterior of his or her Unit and related improvements, including, without limitation, all patio fences, patios, porches, decks, foundations, sidewalks, driveways, concrete pads, air conditioning units, heat pumps and chimneys and flues (whether or not within the boundaries of the Unit). Each Unit owner will be responsible for any costs and expenses related to exterminators. In the event a Unit owner fails to timely make a repair or perform maintenance required of that Unit owner, or in the event the need for maintenance or repair of any part of the Common Areas (including, without limitation, any trunk or branch utility or sewer lines) is caused by the negligent or intentional act of any Unit owner or occupant, or is as a result of the failure of any Unit owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by the Association's insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owner's Unit and on that Unit owner. The determination that such maintenance or repair is necessary, or has been so caused by the Unit owner, shall be made by the Board.

## **ARTICLE IX**

### **UTILITY SERVICES**

By acceptance of a deed to a Unit, each Unit owner agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, and to reimburse the Association for that owner's Unit's share of any utility cost that the Board reasonably determines is attributable to use by that owner's Unit. All other utility costs shall be common expenses and paid by the Association.

## **ARTICLE X**

### **INSURANCE; LOSSES**

1. Fire and Extended Coverage Insurance. The Board shall obtain and maintain for all buildings, structures, fixtures and equipment (whether as a Common Area or Unit), and for the Association's personal property and supplies on the Townhome Property, at the Association's cost and as a common expense, blanket fire and extended coverage against loss

or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Townhome Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent the Unit owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, and excavations). This insurance shall also:

- (a) provide coverage for the Units and built-in or installed improvements, fixtures and equipment that are part of a Unit;
- (b) be written in the name of the Association for the use and benefit of the Association and the Unit owners, and provide for the payment of losses thereunder by the insurer to the Association (or its nominee) as insurance trustee for the benefit of the Association, each Unit owner and the holder of each first mortgage of record on the Units, as their interest appear and as set forth in this Declaration;
- (c) contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy;
- (d) be paid for by the Association, as a common expense;
- (e) contain a waiver of subrogation of rights by the carrier as to the Association, its officers and directors, and all Unit owners;
- (f) provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit owners; and
- (g) be primary, even if a Unit owner has other insurance that covers the same loss.

The Unit owner shall be responsible for the deductible under the Association's insurance on any property damage or casualty loss to the Unit. The amount of such deductible shall be uniform for all Units and shall be set by the Board from time to time in a reasonable amount.

2. Liability Insurance. The Association shall obtain and maintain, at the Association's cost and as a common expense, a commercial policy of general liability insurance covering all of the Common Areas, public ways and any other areas under the Association's supervision, and Units, if any, owned by the Association, even if leased to others, insuring the Association, the directors, and the Unit owners and occupants, with such limits as the Board may determine,

but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) \$1,000,000.00 for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a “severability of interest” provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit owner because of negligent acts of the Association, the Board, or other Unit owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days prior written notice to the Association.

3. Fidelity Coverage. The Board may obtain and maintain, at the Association’s cost and as a common expense, fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association.
4. Hazardous Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Kansas which has a “B” or better general policyholder’s rating or a “6” or better financial performance index rating in Best’s Insurance Reports, an “A” or better general policyholder’s rating and a financial size category of “VIII” or better in Best’s Insurance Reports-International Edition, an “A” or better rating in Demotech’s Hazard Insurance Financial Stability Ratings, a “BBB” qualified solvency ratio or a “BBB” or better claims-paying ability rating in Standard and Poor’s Insurer Solvency Review, or a “BBB” or better claims-paying ability rating in Standard and Poor’s International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder’s ratings or one of the Standard and Poor’s claims-paying ability ratings mentioned above. Any and all deductibles shall be paid for by Owner affected by the claim.
5. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association’s cost and as a common expense, contractual liability insurance, officers and directors liability insurance, and such other insurance as the Board may determine.
6. Nominee; Power of Attorney. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold



or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders, and the Association, and the Townhome, runs with the land, and is coupled with an interest.

7. Unit Owners' Insurance. Each Unit owner and occupant shall obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and similar matters of the type and nature of coverage commonly referred to as "tenants improvements and betterments" or an "HO6" policy. Each Unit owner or occupant may carry such insurance, in addition to that provided by the Association pursuant hereto, as that Unit owner or occupant may determine, subject to the provisions hereof, and provided that no Unit owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the blanket insurance carried pursuant hereto by the Association. In the event any Unit owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Unit owners and occupants. Any basement finished after purchase must be reported to the Association for inclusion or must be covered by Unit owner's insurance.
8. Sufficient Insurance. In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction Unit owners and their first mortgagees, if they are entitled to do pursuant to the provisions of this Declaration, shall elect not to make the repair, restoration or reconstruction, then such repair, restoration or reconstruction shall not be undertaken.
9. Insufficient Insurance. In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit owners and their first mortgagees if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the improvements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit owners in proportion to their respective undivided interests in the Common Areas. Should any Unit owner refuse or fail after reasonable notice to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so

advanced by the Association shall be assessed against the Unit of such Unit owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

10. Election Not to Restore. The Association may, with the written consent of all Unit owners and their first mortgagees, both given within seventy-five (75) days after damage or destruction, determine not to repair, restore or reconstruct any damage or destruction. In the event of such an election not to repair or restore damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction shall be distributed among the owners of the damaged Units, and the holders of their respective mortgage liens, (as their interests may appear), in the proportions of their interests in the Units.

## **ARTICLE XI**

### **GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS**

1. Easements of Enjoyment; Limitations. Every Unit owner shall have a right (i) for ingress to and egress from such owner's Lot and Unit over and across all of the public streets, (ii) of enjoyment in, over and upon the Common Areas, and (iii) an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, including, without limitations, parking rules and regulations and the sharing of common driveways. Each Unit owner shall be deemed to have delegated that Unit owner's right of enjoyment to the Common areas and to ingress and egress to the occupants of that owner's Unit.
2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of entry and access to, over, under, upon and through all of the Townhome Property, including each Unit and the Common Areas, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any and all utilities, improvements, and other items, things or areas of or in the Townhome Property. In the event of an emergency, the Association's right of entry to a Unit may be exercised without notice; otherwise, the Association shall give the Unit owners or occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit.
3. Easements for Encroachments. Each Unit and the Common Areas shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Areas created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of overhangs; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the

improvements; or by reason of errors on the Plats. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Plats, shall and do exist so long as the encroachments remain.

4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Townhome Property contributing to the support of another building, utility line or improvement on another portion of the Townhome Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Townhome Property.
5. Easements for Proper Operations. Easements in favor of the Association and the Declarant shall exist upon, over and under all of the Townhome Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Townhome Property. By these easements it shall be expressly permissible for the Declarant and/or the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Townhome Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board unreasonably interfere with the use and enjoyment of the Townhome Property by owners and occupants.
6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.
7. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over, under and upon each Unit and the Common Areas (a) for a ten-year period of time from the date of the closing by Declarant of the first sale of a Unit to a bona fide purchaser, for access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods provided for warranties for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made by Declarant with Unit purchasers, and (c) for the initial sales and rental period, to maintain and utilize one or more Units and

appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

8. Power of Attorney. Each Unit owner other than Declarant, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.
9. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

## **ARTICLE XII**

### **ASSESSMENTS AND ASSESSMENT LIENS: RESERVE FUNDS**

1. Types of Assessments. Each Unit owner shall be obligated, and by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) annual operating assessments to pay common expenses, (b) special assessments to pay common expenses and for capital improvements, and (c) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.
2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote and provide for the health, safety, and welfare of Unit owners and occupants and the best interests of the Townhome Property.
3. Elements-Appportionments; Due Dates.
  - (a) Annual Operating Assessments Payable Monthly.
    - (i) The Declarant shall directly pay or contribute to the Association the following amounts toward "common expenses" of the Association.
      - (A) All common expenses allocable to the period prior to the closing of the first sale of a Completed Unit.

- (B) The Developer will cover any deficits in the common expenses until the turnover date.
- (ii) Beginning with the closing of the first sale of a Completed Unit by Declarant, annual operating assessments to pay common expenses shall be payable in monthly installments and shall be assessed against (i) all Completed Units owned by parties other than the Declarant and (ii) all Completed Units rented or for rent by the Declarant to third parties. The first annual operating assessment for each such Completed Unit shall be prorated based upon when it became a Completed Unit during the year.
- (iii) Annually, in advance where practical, the Board shall estimate, and allocate among all Completed Units subject to assessment and their owners on an equal per Completed Unit basis, “common expenses” of the Association, consisting of the following:
  - (A) the estimated fiscal year’s cost of the maintenance, repair, and other services to be provided or paid for by the Association (in excess of reserves to be expended therefor);
  - (B) the estimated fiscal year’s costs for insurance premiums to be provided and paid for by the Association [except that the costs for the casualty insurance on Completed Units allocable (as determined by the Board) to each Completed Unit shall be an expense solely of such Completed Unit];
  - (C) the estimated fiscal year’s costs for utility services not separately metered or charged to Unit owners;
  - (D) the estimated amount required to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;
  - (E) an amount deemed adequate by the Board to maintain a reserve for painting of Units, and a reserve for future repairs and replacement of the Units’ roofs; and
  - (F) the estimated fiscal year’s costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

- (iv) The Board shall thereupon allocate to each Completed Unit subject to assessment on an equal per Unit basis and thereby establish the annual operating assessment for each separate Completed Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.
  - (v) The annual operating assessment shall be payable, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit owner from prepaying assessments without a discount for prepayment. The due dates of any such installments shall be established by the Board, or, if it fails to do so, an equal monthly pro rata share of the annual operating assessment for a Unit shall be due the first day of each month.
  - (vi) If the amounts so collected (together with payments by or from the Declarant) are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board as a special operating assessment among the Completed Units subject to assessment on an equal per Unit basis, and shall become due and payable on such date or dates as the Board determines.
  - (vii) If assessments collected during the fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit owners.
  - (viii) The rate of annual assessment per Completed Unit for year 2001 shall be set by the Board and shall not exceed \$180.00 per month, which is in addition to the initial two month payment described in Section 8 of this Article XII. Thereafter, the rate of annual assessment upon each Completed Unit may be increased (i) by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year, or (ii) at any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for the purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Association to perform its duties as specified in this Declaration.
- (b) Special Assessments for Capital Improvements.

- (i) In addition to the annual operating assessments and any special operating assessments, the Board may levy, at any time, special assessments to construct, reconstruct or replace capital improvements to the extent that reserves therefor and any applicable insurance proceeds with respect thereto are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to occupants) shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to ten percent (10%) or more of that fiscal year's budget, without the prior consent of Unit owners owning at least 60% of the then existing Units.
    - (ii) Any such special assessment shall be pro rated among all Completed Units on an equal per Unit basis and shall become due and payable on such date or dates as the Board determines.
  - (c) Special Individual Unit Assessments. The Board shall levy assessments against an individual Unit, or Units, and the owner or owners thereof, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of fire and extended coverage insurance, the cost of making repairs (plus a reasonable overhead factor) which are the responsibility of a Unit owner, and a Unit owner's interest, late charges, fines, enforcement and collection charges). Any such assessment shall become due and payable on such date as the Board determines.
  - (d) Defense of Claims. If any owner commences a lawsuit or files a counterclaim or crossclaim against the Association, the Board, or any committee, or any individual director, officer or committee member of the Association, and such owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Association, Board, or individual director, officer or committee member sued by such owner shall be entitled to recover from such owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees. Such recovery right shall constitute a special assessment against the owner's Unit and shall be enforceable against such Unit as provided herein.
4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit owner subject thereto. Written notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit owner, unless the Unit owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit owner.
5. Effect of Nonpayment of Assessment; Remedies of the Association.

- (a) If any installment of an assessment is not paid within ten (10) days after the same is due, the entire unpaid balance of the assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.
- (b) If any installment of an assessment is not paid within ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule (or if the Board fails to establish a rate by rule, at the rate of ten percent (10%) per annum), (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, (iii) charge the cost of collection, including attorney fees and other out-of-pocket expenses and/or (iv) cut-off or restrict the services to be provided to the Unit by the Association and the use of the Common Areas (other than the Public Streets).
- (c) All assessments, together with interest, late fees, and costs, including attorney fees, shall be a charge and lien in favor of the Association upon the Unit against which each such assessment is made.
- (d) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that assessment, including all future installments thereof, interest, late fees, and costs, including attorney fees, may be filed with the Recording Office pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by an officer or other agent of the Association. For each certificate so filed, the Association shall be entitled to collect from the Unit owner of the Unit described therein a fee of \$150.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Unit.
- (e) The lien provided for herein shall become effective from the time a certificate of lien was duly filed therefor, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Kansas for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.
- (f) Any Unit owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the District Court of Johnson County, Kansas for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.



- (g) Each such assessment together with interest, late fees, and costs, including attorney fees, shall be the joint and several personal obligation of the Unit owners who owned the Unit at the time when the assessment fell due and all subsequent Unit owners.
  - (h) In addition to the other remedies available to it, the Association, as authorized by the Board, may bring or join in an action at law against the Unit owner or owners personally obligated to pay the same, and an action to foreclose a lien. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent permitted by Kansas law.
  - (i) No claim of the Association for assessments and charges shall be subject to setoffs or counterclaims.
  - (j) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use or by waiving use or enjoyment of the Common Areas or the services provided by the Association, or any part thereof, or by abandonment of his, her or its Unit. No owner shall be entitled to a reduction or abatement of any assessment as a result of any failure or interruption of any utility or other service or any damage to or destruction of or the making of any repairs or replacements to any Common Area or to any Unit.
  - (k) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their interests in the Townhome Property, and to continue to provide service, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.
6. Subordination of the Lien to First Mortgages. To the extent provided in the Townhome Act, the lien of assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit to the extent relating to periods prior, in the case of foreclosure, to the date of the court order authorizing the sale, and, in all other cases, to the date of the deed vesting legal title in the successor owner. If the Unit owner subsequently redeems the Unit from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter.

7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
8. Contribution to Reserves Upon Sale of Units. Upon the closing of the sale of each Completed Unit by Declarant, Declarant shall collect from the buyer and cause to be paid over to the Association, for deposit into its reserve funds, a sum equal to two months of the then monthly assessment in effect for the Completed Units subject to assessment.
9. Initial Casualty Insurance. Upon closing of the sale of each Completed Unit by Declarant, Declarant will collect from the buyer, and cause to be paid over to the Association, that portion of the insurance described in Article X, Section 1, attributable to Buyer's Unit for the twelve-month period following closing.

### **ARTICLE XIII**

#### **CONDEMNATION**

Each Unit owner, by accepting title to a Unit, grants to the persons who shall from time to time constitute the Board of the Association an irrevocable power of attorney, coupled with an interest, to conduct negotiations with the State, a political subdivision thereof or any other corporation, agency or authority having the power of eminent domain that seeks to acquire any of the Townhome Property. In such event, the Association shall act as the representative of the Unit owners, and the Board may cause the Association to execute and deliver the appropriate conveyance on behalf of all owners in return for the agreed consideration. The Board shall allocate such consideration, to the extent possible, to the repair, replacement or restoration of the condemned Common Areas and then to the Unit owners and their respective mortgagees, as their interests may appear, in proportion to their respective undivided interest in the Common Areas. In the event negotiations shall fail, the condemning authority may join the Association as a party defendant in lieu of naming all Unit owners and such proceedings shall bind all Unit owners' however, any owner having an interest in the common Areas may be made a party defendant in such proceedings. Subject to the foregoing provisions, in the event that any Unit is taken by condemnation or the exercise of the power of eminent domain, each owner and the holder of mortgages on the Unit shall be entitled to seek and have their just damages for the taking of the Unit, as allowed by law, including severance damage, if any. No provision herein shall be deemed to give any Unit owner or any other party priority over the rights of the holder of any first mortgage on any Unit in the case of a distribution of condemnation awards for losses to or a taking of the mortgaged Unit.

### **ARTICLE XIV**

## **TOWNHOME INSTRUMENT REQUIREMENTS**

1. **Association Control.** Except in its capacity as a Unit owner of unsold Units, the Declarant or its agent will not retain any interest in any of the Common Areas after the Turnover Date, except as expressly provided or contemplated herein. The owners of Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Areas, as elsewhere provided herein.
2. **Declarant's Obligations.** Declarant, in its capacity as owner of Units not yet sold, will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Townhome Instrument, or established by law.
3. **Unit Owners' Rights and Obligations.** Each Unit owner will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Townhome Instrument, or established by law, during the time of that owner's ownership of a fee simple interest in a Unit.

## **ARTICLE XV**

### **AMENDMENTS**

1. **Power to Amend.** Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration shall require the consent of Unit owners owning at least two-thirds (2/3) of the Units and, until the sale by Declarant of the last contemplated Unit, the Declarant; provided, however, that the written consent of the City also shall be required for any termination of this Declaration in its entirety or for any amendment, modification or termination of any provision of this Declaration regarding the Private Street. Notwithstanding the foregoing (except for the provision above relating to the requirement of the City's consent):
  - (a) The consent of Unit owners of at least eighty percent (80%) of the Units and the written consent of the City shall be required to terminate the Townhome and this Declaration; and
  - (b) Declarant reserves and shall have the absolute unilateral right and power to amend the Townhome Instruments, to the extent necessary to (i) cause the Townhome Instruments to comply with the Townhome Act or conform to the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit, (ii) update Exhibit B of this Declaration, (iii) comply with any requirement the City makes as a condition to approval by the City of some matter relating to the development of the Townhome Property, or (iv) correct any typographical error, or factual error or omission that needs to be corrected in the opinion of Declarant. No such amendment by the Declarant shall require the consent of any Unit owner.

2. Method to Amend. An amendment to this Declaration, adopted with the consents of Unit owners, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to this Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by this Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recording Office.
3. Form of Consent of Owners. The consent of owners of Units to any amendment of this Declaration may be obtained in the form of written consent(s) executed by two-thirds (2/3) of all of the Unit owners or in the form of a formal resolution approved by two-thirds (2/3) of all of the Unit owners at a meeting of the members.

## **ARTICLE XVI**

### **GENERAL PROVISIONS**

1. Covenants Running With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Townhome Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.
2. Enforcement. In addition to any other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge.

Whenever the Declarant or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Declarant or the Association may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Lot involved.

To the extent permitted by law, if the Declarant or the Association shall be successful in obtaining a judgment or consent decree in any court action, the Declarant and/or the Association shall be entitled to receive from the party breaching this Declaration as part of the judgment or decree the reasonable legal fees and expenses incurred by the Declarant and/or the Association with respect to such action.

If any Unit owner commences a lawsuit or files a counterclaim or crossclaim against the Association, the Board, or any committee, or any individual director, officer or committee member of the Association, and such Unit owner fails to prevail in such lawsuit or counterclaim, the Association, Board, or individual director, officer or committee member sued by such Unit owner shall be entitled to recover from such Unit owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees. Such recovery right shall constitute a special assessment against the Unit owner's Unit and shall be enforceable against such Unit as provided herein.

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 provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Townhome Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect. This Declaration shall be and remain in full force and effect even if the Townhome Property (or any part thereof) has not been properly submitted to the provisions of the Townhome Act or the formalities of the Townhome Act have not been completely followed.
4. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.
5. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first above written.

ST. JAMES COURT, L.L.C.

By: \_\_\_\_\_

STATE OF KANSAS            )  
  ) SS  
COUNTY OF JOHNSON        )

Subscribed and sworn to before me by \_\_\_\_\_, who is known to me to be the person who executed this instrument and who acknowledged that he executed the same as his free act and deed, and acknowledged full understanding of the terms and provisions of the foregoing instrument.

IN WITNESS WHEREOF, I have signed my name and affixed my seal on the day of \_\_\_\_\_, 2001.

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

My Commission Expires  
\_\_\_\_\_

**EXHIBIT "A"**

All of Lots 1A-D through 17A-D, Tracts A-F, St. James Court, First Plat, a Subdivision of land in the City of Olathe, Johnson County, Kansas, according to the plat thereof.