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## **ROCKWOOD COMMONS**

### **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND DEDICATION OF EASEMENTS**

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**DECLARATION  
OF COVENANTS, CONDITIONS & RESTRICTIONS  
OF  
ROCKWOOD COMMONS**

THIS DECLARATION, made on the date hereinafter set forth by **ROCKWOOD, L.L.C.**, a Kansas Limited Liability Company, hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Declarant is the Owner of certain property in the City of Overland Park, Kansas, County of Johnson, State of Kansas, which is more particularly described as:

**On Exhibit "A", attached hereto and made a part hereof.**

AND WHEREAS, Declarant desires to place certain protective covenants, conditions, restrictions, reservations, liens and charges on said property, as hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof;

NOW THEREFORE, Declarant hereby declares that all of the property described above, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described property or any part thereof, their heirs, successors and

assigns and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

SECTION 1. "Architectural Review Committee" shall mean the Committee, or the Board of Directors if no such Committee is appointed, with the authority described in this declaration.

SECTION 2. "Area of Common Responsibility" shall mean the Common Area, together with all areas, if any, which by contract with any person or entity, become the responsibility of the Association, together with any areas, if any, upon a Lot, the maintenance, repair or replacement of which is the responsibility of the Association pursuant to the terms of this declaration, or as determined by the Board of Directors.

SECTION 3. "Association" shall mean the **Rockwood Commons** Homeowners' Association, a non-for-profit corporation, formed pursuant to the General Corporation Code of the State of Kansas, by Articles of Incorporation filed with the Secretary of State for the State of Kansas, and its successors and assigns, created to manage and govern the Area of Common Responsibility. The "Board of Directors" or "Board" shall be the elected governing body of the Association which has the power and authority, which are more particularly set forth in the By-Laws of the Association, as the same are adopted and as they may be amended from time to time.

SECTION 4. "Common Area" shall mean that real, personal, tangible or intangible property now or hereafter owned by the Developer, and subsequently deeded to the Association.

SECTION 5. "Declarant" or "Developer" shall mean and refer to **Rockwood, LLC**, its successors and assigns.

SECTION 6. "Improved Property" shall mean a single tract consisting of one or more contiguous Lots on which a Residence has been constructed or is in the process of being constructed, or on which any other building has been constructed, or is in the process of being constructed thereon, as of January 1, of any calendar

year.

SECTION 7. "**Lot**" shall mean and refer to any separately numbered plot of land shown upon any recorded subdivision map of property.

SECTION 8. "**Member**" shall mean and refer to every person or entity who holds membership in the **Rockwood Commons** Homeowners' Association, Inc., as provided by this **Rockwood Commons** Declaration, recorded in the office of the Register of Deeds, Johnson County, Kansas.

SECTION 9. "**Residence**" shall mean any Townhome Residence.

SECTION 10. "**Tenant**" shall mean any person leasing any space in a Residence under any lease, written or oral.

SECTION 11. "**Townhome Lot**" shall mean any of the Lots in **Rockwood Commons**, a subdivision in the City of Overland Park, Johnson County, Kansas.

SECTION 12. "**Townhome Residence**" shall mean one single family residential Townhome joined together with at least one additional single family residential Townhome by a common wall, walls, roof or foundation and located on a Townhome Lot.

SECTION 13. "**Unimproved Property**" shall mean any Lot or Lots which do not meet the definition of "Improved Property" as of January 1, of any calendar year.

## ARTICLE II

### ARCHITECTURAL CONTROL

SECTION 1. **Conditions.** No improvements, alterations, repairs, excavations, changes in grade or other work which in any way alters the exterior of any property of the improvements located thereon from its natural or improved state existing on the date such property was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of Declarant or Architectural Review Committee hereafter referred to as "Review Committee." No building, fence, or other structure shall be commenced, erected, maintained, improved, altered, made



or done without the prior written consent of the "Review Committee."

SECTION 2. **The Architectural Review Committee.** An Architectural Review Committee consisting of one or more persons shall fulfill the functions as set forth in the Article II. Such Committee shall be appointed by Declarant or elected by Homeowners Association (HOA) after HOA has enough voting rights.

SECTION 3. **Purpose.** Rockwood, LLC, or the Architectural Review Committee as applicable, shall regulate the external design, appearance, use, location and maintenance of the property and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

SECTION 4. **Procedures.** In the event "Review Committee" fails to approve, modify or disapprove in writing an application within thirty (30) days after plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted. The applicant may appeal an adverse Architectural Review Committee to Declarant or the Homeowners Association, Board of Directors, which may reverse or modify such decision by a two-thirds (2/3) vote of the directors. No appeal may be taken from a decision of Rockwood, LLC.

### ARTICLE III

#### **ASSOCIATION MEMBERSHIP**

SECTION 1. **Membership and Voting Rights in the Association.** The Association shall have two classes of voting memberships, Class A and Class B, as follows:

- (a) Every Owner, other than the Developer, shall be a Class A Member of the Association. Class A membership shall be appurtenant to any may not be separated from Lot ownership, and the membership shall be deemed to be conveyed by any instrument which transfers title to a Lot to an Owner, regardless of whether such instrument mentions or describes the membership. Class A Members shall be entitled to one vote for each Lot, which they own. When more than one person owns a Lot, all such persons shall be Class A Members, but shall be entitled to cast only one (1) vote for the Lot, and the vote shall not be

fragmented, but shall be exercised as the Owners among themselves determine. In the event multiple Owners are unable to determine among themselves as to how the vote shall be exercised, and if more than one person casts differing votes for any one Lot, whether in person, or by proxy, then the votes shall be disregarded and the presence of any of the Owners shall be disregarded in determining whether a quorum is present. In no event shall more than one Class A vote be cast with respect to any one Lot.

(b) The Class B Member(s) of the Association, shall be the Developer. The Class B Member(s) shall be entitled to one hundred (100) votes for each Lot owned by the Developer.

## SECTION 2. Surrender of Class B Membership.

(a) The Class B membership(s) of the Developer shall terminate and be converted to Class A membership upon the happening of the first to occur of the following event:

(1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

(2) The Developer's determination to terminate its Class B membership, which determination may be made in the Developer's sole discretion.

From and after the happening of the first of these events, the Class B Member shall be deemed a Class A Member, and shall receive one Class A vote for every one hundred (100) Class B votes outstanding at the time the Class B membership is terminated.

(b) The Developer will convey its interest in the Common Area to the Association at the earlier of (1) the time the Developer terminate(s) its Class B membership, or (2) when, in the sole discretion of the Developer, the Developer determine(s) to convey the Common Area to the Association.

### SECTION 3. Quorum, Proxies, Voting.

(a) Fifteen percent (15%) of the outstanding Class A memberships and all of the Class B memberships of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Association. Any action to be taken by the Association, the Board of Directors, the Members, or any other party which requires the approval of all or any part of the Members, shall be valid only in the event approval is obtained at a meeting of the Association duly held, at which a quorum is present.

(b) At all meeting of the Association, any Member entitled to vote may vote in person or by proxy, executed by the Member, in writing. Proxies shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid longer than twelve (12) months after it is signed. Every proxy shall be revocable at any time and shall automatically cease upon conveyance of the Member's Lot. No Class A Member may vote more than one (1) additional vote by proxy. The Class B Member, may receive and vote any number of proxies for Class A memberships.

(c) The Association shall hold meetings of all the Members, not less frequently than once a year, which shall be the annual meeting, held in accordance with the By-Laws of the Association.

SECTION 4. Articles of Incorporation and By-Laws. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association, shall be as set forth in its Articles of Incorporation and By-Laws. If any provisions set forth in this Declaration applicable to notice, voting, or quorum requirements, are in conflict with any provision of Kansas Law applicable to not-for-profit corporations on the date of this Declaration, or at any time after this date, the applicable provision of Kansas law shall control. The Board of Directors of the Association shall have the full power and authority to act for the Association except in the case of those specific matters reserved to the Members in this Declaration, or in the By-Laws of the Association.

SECTION 5. Developer's Control of the Association. Notwithstanding anything in this Article III or elsewhere in this Declaration to the contrary, the

Developer shall maintain absolute and exclusive control over the Association and the Architectural Review Committee, including appointment and removal of the President and all other officers of the Association, all members of the Board of Directors and all members of the Architectural Review Committee, until the Developer owns no Lots or land in Rockwood Commons (as it exists from time to time). Until such time, only the Developer will be entitled to cast any votes with respect to the election and removal of Association officers or directors and members of the Architectural Review Committee, or any other matter requiring the vote or approval of Association members. The Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Section by written assignment without affecting any rights of control not relinquished.

#### ARTICLE IV

##### SEWER SERVICE LINE, COMMON PLUMBING AND COMMON UTILITY LINE MAINTENANCE

SECTION 1. ALL SEWER SERVICE LINES, ALL PLUMBING INTERIOR TO THE BUILDING AND COMMON TO MORE THAN ONE UNIT, ALL PIPES, WIRES, CONDUITS OR OTHER SERVICE LINES RUNNING THROUGH A UNIT WHICH IS UTILIZED FOR OR SERVES MORE THAN ONE UNIT SHALL BE REPAIRED AND MAINTAINED BY THE **ROCKWOOD COMMONS** HOMEOWNERS ASSOCIATION.

#### ARTICLE V

##### COMMON AREA AND FACILITIES

SECTION 1. **Ownership.** The Common Area, shall be owned by the Association.

SECTION 2. **Enjoyment.** Subject to Article V, Section 3, each Owner shall have a right and easement of ingress to, egress from, and use and enjoyment of the Common Area, which shall be appurtenant to, inseparable from and shall pass with the title to each Lot. Each Owner may use the Common Area, subject to reasonable rules and regulations adopted by the Board of Directors, in accordance with the

purpose for which the Common Area is intended, but without hindering or encroaching upon the lawful rights of other Owners. The streets within **Rockwood Commons** are private streets, and shall be part of the Common Area.

SECTION 3. **Regulations and Suspension of Rights.** The rights and easements of use and enjoyment created hereby, shall be subject to the following:

(a) The right of the Board of Directors to prescribe reasonable rules, regulations, and fees governing the use, operation and maintenance of the Common Area.

(b) The right of the Board of Directors, to suspend an Owner's voting rights, and an Owner's right to use any recreational facilities, located upon the Common Area, for any period during which any assessment levied by the Association, against the Owner remains delinquent and unpaid. The Board may also suspend an Owner's voting rights, and the right of an Owner, to use recreational facilities located upon the Common Area, for any infraction of the Association's rules and regulations, which suspension may remain in effect, for no longer than the duration of the infraction, plus an additional period commencing immediately thereafter, not to exceed thirty (30) days.

(c) The right of the Association to dedicate or transfer all, or any part of the Common Area, to any public agency, authority, or utility, to provide necessary or desirable utilities, services or improvements.

(d) The right of the Board of Directors to promulgate rules and regulations, including fines, if necessary, for the ownership and behavior of pets.

SECTION 4. **No Restrictions on Access to Lots.** The Board of Directors may not revoke, limit, restrict, or suspend, in any way, the right of any Owner to use and enjoy driveways, sidewalks and parking areas, located upon the Common Area, so as to interfere with access to and use of the Owner's Lot.

SECTION 5. **Delegation of Use.** An Owner's family, Tenants and social invitees, shall have the right to use and enjoy the Common Area. These rights shall not be available or delegated, to any party other than an Owner, and such Owner's

family, Tenants and social invitees. The Association may adopt reasonable rules and regulations, regarding such use.

SECTION 6. **Designation of Common Area.** Developer is hereby granted the unilateral right to declare any part of **Rockwood Commons**, which the Developer owns as Common Area, so long as such action does not conflict with the terms of this Declaration, pursuant to a supplementary declaration, filed in the office of the Register of Deeds for Johnson County, Kansas.

SECTION 7. **Power of Board of Directors.** The Board of Directors shall have the power and authority, to act for the Association, unless the matter is specifically reserved to the Members, under this Declaration, or in the By-Laws.

## ARTICLE VI

### **ASSESSMENTS**

#### SECTION 1. **Obligation.**

(a) Each Owner, by acceptance of the deed for the Owner's Lot, hereby covenants and agrees, and shall be deemed to covenant and agree, to pay to the Association, or its nominee, the following amounts, regardless of whether the deed does or does not specifically so provide:

(1) Annual assessments; and

(2) Special assessments for capital improvements, or such other purposes set forth herein, to be fixed, established and collected, from time to time, as hereinafter provided; and

(3) Specific assessments against an Owner's particular Lot, which are established pursuant to the terms of this Declaration.

(4) Monthly assessment for water, it being understood that Owner's Lot or Unit will not be separately metered for water usage.

(b) Immediately upon transfer of record title to a Lot, the transferee of

the Lot, shall contribute to the capital of the Association, an amount equal to one-sixth (1/6) of the amount of the annual assessment, for that Lot. This contribution shall be in addition to the twelve (12) monthly installments of the annual assessment. An Owner's obligation to pay the monthly installments, shall commence on the date an Owner accepts the deed for an Owner's Lot.

**SECTION 2. Purpose of Annual Assessment.** The annual assessment levied by the Association, upon the Owner's, may be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners, including the maintenance of real or personal property. Without limiting the generality of the foregoing, annual assessment charges may be used for the following purposes:

- (a) Routine repair, maintenance and care of Townhome Residence exterior surfaces and roofs (except for any Townhome Residence, owned by a Developer).
- (b) Routine repair, maintenance and care of walks, driveways, all trees, shrubs, grass, berms, utility lines and conduits, outdoor lighting equipment, ponds, streams, waterfalls, and other watercourse related improvements, located on a Townhome Lot, or the Common Area, all other parts of the Common Area, and all costs of repair, maintenance and care of the Area of Common Responsibility (except the Association, shall not be responsible for any costs respecting any Lot owned by a Developer).
- (c) Trash removal and snow removal services to the Townhome Lots, (except the Association, shall not be responsible for any costs respecting any Lot owned by a Developer).
- (d) Ad valorem and other taxes on land and improvements owned by the Association, if any.
- (e) Management fees and other expenses (including necessary legal and accounting expenses) of the Association.
- (f) Contingency and other reasonable reserve funds, as determined

from time to time, by the Board of Directors.

(g) Insurance premiums for all insurance secured by the Board of Directors, pursuant to this Declaration.

(h) Costs of maintaining on-site security, if any, for **Rockwood Commons**, but not interior security for Residences.

(i) The payment of such other fees and charges, as may be elsewhere required or authorized by this Declaration, or that the Board of Directors may from time to time determine necessary, or desirable to meet the purposes and obligations of the Association, as stated in its Articles of Incorporation, the By-Laws, and in this Declaration.

### SECTION 3. Annual Assessment; Limits Thereon.

(a) The Association shall be on a fiscal year commencing January 1, and ending December 31, unless changed by the Board of Directors. Prior to the beginning of each fiscal year, the Board of Directors shall prepare a budget for the ensuing twelve (12) months, which shall contain the estimated costs of maintaining the Area of Common Responsibility, and otherwise performing all of the obligations established under this Declaration.

(b) On the basis of these budgets, the annual assessment for each Lot for the ensuing year, shall be established by the Board of Directors. The Board of Directors shall establish separate annual assessments for each type of Lot, which assessments shall reflect the costs to the Association of the amenities provided by the Association to different types of Lots. Different rates of annual assessments may be established for Interior Lots and Exterior Lots, as defined in Article VI, Section 7 below. Upon reasonable notice and at their sole cost and expense, First Mortgagees and Owners, shall have the right to examine the Association's books, records, financial statements, copies of this Declaration, the Association's By-Laws, and the Association's Articles of Incorporation, at the Association's offices.

(c) The annual assessment may be increased each year by the Board of



Directors, without a vote of the Members, in the maximum amount of the sum of the annual increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items (for the Kansas City Metropolitan Area), published by the United States Department of Labor, Bureau of Labor Statistics, for the October preceding the effective date of the increase in the annual assessment, plus three percent (3%) of the annual assessment for the previous year. In the event the above-described index is discontinued, the Board of Directors may designate another index of a similar nature.

(d) Any annual increase in the annual assessment for the Lots, which is greater than the amount authorized in the above paragraph, shall not be effective unless approved by (1) the Board of Directors, (2) fifty-one percent (51%) of the votes of Class A memberships, who are Owners of the type of Lot affected by the annual increase, and (3) all Class B memberships for the type of Lot affected by the annual increase, who are voting in person, or by proxy, at a meeting duly called for such purpose. Written notice setting forth the purpose, time and place of the meeting, shall be sent to all applicable Members, not less than thirty (30) days, nor more than fifty (50) days in advance, of the meeting.

(e) The annual assessment shall remain constant throughout the fiscal year.

#### **SECTION 4. Date of Commencement of Annual Assessments; Due Date.**

Each Owner's annual assessment, shall be payable without demand or set-off, except as otherwise provided herein, to the Association in twelve (12) equal monthly installments, each of which shall be due on the first day of each calendar month. Owners shall become obligated to pay the annual assessment to the Association, when the deed conveying fee simple title to the Lot, has been issued and delivered. Annual and special assessments, may also be paid by, for and on behalf of Owners, by their First Mortgagees, under such terms and agreements, as the Board of Directors may from time to time, deem appropriate, but in no event shall the holder of a mortgage encumbering a Lot, be required to collect or pay any annual or special assessment.

**SECTION 5. Duties of the Board of Directors, with Respect to Annual Assessment.**

- (a) The initial annual assessment shall be set by the Developer.
- (b) At least thirty (30) days in advance of each fiscal year, the Board of Directors shall, by resolution, determine the amount of the annual assessment applicable to each Lot, in accordance with this Article VI. Written notice of annual assessment shall be given to each Owner. Failure of the Association, to give written notice of the annual assessment prior to the beginning of a fiscal year, shall not invalidate the annual assessment levied thereafter, nor shall failure to levy an annual assessment for any one fiscal year affect the right of the Board of Directors to do so for any subsequent fiscal year.
- (c) Any Owner who becomes subject to an annual assessment, after the commencement of a fiscal year, by acquiring a Lot, shall commence payment of the annual assessment, on a pro rata basis, commencing on the date the deed to the Lot is issued and delivered.
- (d) The Board of Directors shall, upon demand, at any time, furnish to any Owner, a certificate, in writing, and in recordable form, signed by the President or Secretary of the Association, setting forth whether all fees or charges have been paid to date. A reasonable charge may be made by the Board of Directors, for issuing such a certificate. The certificate may be recorded in the office of the Register of Deeds for Johnson County, Kansas, and upon recording, shall constitute conclusive evidence of the status of payment of any annual or special assessment, for the period stated in the certificates.

**SECTION 6. Special Assessments.** In addition to the annual assessment authorized above, the Board of Directors may, with the prior approval of the Class B Member(s), so long as such Member(s) exist(s), levy in any year, a special assessment, applicable to that year only, for the purpose of defraying in whole or in part, any prior year's budget deficit, or the cost of any construction, reconstruction, repairs or replacements of capital improvements, including, any fixtures or personal property related thereto, to be completed by the Association, pursuant to the terms hereof. After the termination of all the memberships of the Class B Member(s),

special assessments shall require an affirmative vote of fifty-one percent (51%), of the votes cast by Class A Members of the Association, who are Owners of the type of Lot affected by the special assessment, and who are voting in person, or by proxy, at a special meeting, duly called for the purpose of considering such special assessment. Notice of any such special meeting, shall be given to each Member, not less than thirty (30) days, and not more than fifty (50) days prior to the date of such meeting, and shall set forth the time, purpose and place of such meeting. The special assessment shall be due and payable at the time and in the manner determined at the meeting.

**SECTION 7. Assessments for Different Types of Lots.**

(a) Townhome Lots. Townhome Lots shall be designated as an (1) "Interior Lot", which shall mean a Townhome Lot, with a Townhome Residence, with more than one wall in common, with two or more other Townhome Residences, or (2) "Exterior Lot", which shall mean any Townhome Lot, which is not an Interior Lot. That portion of the annual assessment levied against each Townhome Lot, which represents the Association's costs for trash removal and snow removal, shall be equal. The portion of the annual assessment, which represents the Association's cost for lawn care and snow removal, may be greater for Exterior Lots, than for Interior Lots, but the annual assessment levied against each Exterior Lot, shall be no greater than one hundred forty percent (140%) of the annual assessment levied against each Interior Lot.

The budget prepared by the Board of Directors for the Townhome Lots, shall include and specifically detail the costs of lawn service, trash and snow removal, all exterior building maintenance, and the costs of maintaining the Area of Common Responsibility.

**SECTION 8. Effect of Non-payment of Assessments; Lien; Remedies; Maintenance; and Enforcement of Lien by Association.**

(a) If any assessment or any part thereof, is not paid when due, the unpaid amount of the assessment, shall be deemed delinquent and shall thereupon, be a lien which will encumber the Lot of the non-paying Owner. The lien shall take priority, as of the date this

Declaration is recorded, and will be superior to the lien of any mortgage, or other lien hereafter, placed on said Lot. The lien, however, is hereby subordinated to and shall be inferior to (1) the lien of any valid first mortgage, now existing, or which may hereafter encumber the Lot, and (2) real estate tax liens, in favor of any assessing unit or special district, which encumber the Lot. If any Owner fails to pay any assessment when due, the assessment will be delinquent, and payment of principal, late charges, interest, costs of suit and reasonable attorneys' fee, to the extent permitted by law, may be enforced as a lien on the Lot, against which the assessment is levied in proceedings, in any court in Johnson County, Kansas, having jurisdiction of suits, for the enforcement of liens. Additionally, the Association may proceed against any Owner or Owners, who fail to pay any assessment when due, and shall be entitled to seek all remedies available at law and in equity.

(b) The Association will bring suits to enforce liens or otherwise collect unpaid assessments. The Association may, at its discretion, file certificates of non-payment of assessments, in the office of the Register of Deeds of Johnson County, Kansas, whenever any assessments are delinquent. For each certificate so filed, the Association will be entitled to collect from the Owner or Owners of the Lot(s) described therein, a fee as established, from time to time, by the Association, which fee shall be secured by the lien. The fee will be collectible in the same manner as the original assessment and the principal, late charges, interest, costs of suit and reasonable attorneys' fees, due on the assessment.

(c) The lien against any Lot, shall continue for a period of two (2) years, from the date of delinquency, and no longer, unless an action as described above, has been filed. In the event an action is filed within two (2) years after the date of delinquency, the lien shall continue until termination of the action, and until sale of the Lot under the execution or judgment establishing the same.

(d) In no event, shall the failure to pay any assessment constitute a default under a mortgage encumbering a Lot, unless specifically set forth in the mortgage. No Owner may waive, have waived, or otherwise escape liability for the assessments provided herein, by non-

use of any Common Area, or by abandonment of the Owner's Lot. The Association may terminate or suspend any services provided to an Owner or the Owner's Lot or Residence, if and so long as the Owner fails to pay any assessment, and all Owners hereby waive and release the Association from all liability, to provide services in such an event, and also waive and release, the Association from all consequential or incidental damages, resulting from the cessation of such services.

(e) All payments received on delinquent assessments, shall be applied first to costs, then to late charges, if any, then to interest, if any, than to delinquent assessments, then to any unpaid installments of assessments, in the order of their coming due, whether or not such installments are the subject matter of any actions to enforce a lien.

SECTION 9. **Subordination of Lien to First Mortgages.** The lien on each Lot for payment of the annual and special assessments, shall be subordinate and inferior to the lien of any valid first mortgage, now or hereafter, placed upon any Lot. Any sale of a Lot, pursuant to a decree of foreclosure of any first mortgage, or a deed in lieu of foreclosure of any first mortgage, shall not relieve the Lot or the new Owner thereof, from liability for the amount of any assessments thereafter becoming due, nor from the lien of any subsequent assessment. Any First Mortgagee who acquires title to any Lot, pursuant to foreclosure of its first mortgage or deed in lieu of foreclosure of its first mortgage, shall take title free of any claims for unpaid assessments against the Lot which accrued prior to the date title is acquired by the First Mortgagee.

SECTION 10. **Notice.** A First Mortgagee, who requests notification, and who provides the Association with its mailing address will be given written notice by the Association if the Owner of a Lot encumbered by a lien in favor of the First Mortgagee is in default of either the payment of any assessments, annual or special, imposed by the Association, or any other obligation imposed by the Association, or any other default, which is not cured by the Owner, within thirty (30) days. Failure of the Association to give such notice shall not relieve the Owner of liability for any unpaid assessments or other obligations.

SECTION 11. **Exempt Property.** Any portion of **Rockwood Commons**, dedicated to and accepted by any municipality or public utility for public use and purposes, and except as otherwise expressly provided in this Declaration, all

portions of **Rockwood Commons** owned by any Developer, are wholly exempt from the assessments and liens, created hereby.

SECTION 12. **Specific Assessments.** The Board of Directors shall have the right and power, but not the obligation, to levy specific assessments against individual Lots, for the purpose of paying for any costs incurred by the Association as a result of the breach of the terms of this Declaration by an Owner or the Owner's agents, family members, guests, Tenants, invitees or contractors, or as a result of the negligence or willful misconduct of the Owner or the Owner's agents, family, guests, Tenants, invitees or contractors, or for such other purposes, as are set forth in this Declaration. Any specific assessments shall be due and payable in accordance with such terms as may be established by the Board of Directors, or this Declaration and shall be secured by the lien and enforceable by the Association as otherwise set forth herein.

SECTION 13. **Easements.** Any foreclosure of the lien securing an assessment shall not terminate any easement granted by the Developer, whether pursuant to this Declaration, or otherwise, and all assessments shall be inferior and subordinate to such easements.

## **ARTICLE VII**

### **MANAGEMENT, MAINTENANCE, REPAIRS**

### **ALTERATIONS AND IMPROVEMENTS**

SECTION 1. **Manager or Managing Agent.** The management, repair, improvement, and alteration of (a) all improvements constructed upon the Areas of Common Responsibility and (b) all other property set forth herein as the responsibility of the Association, shall be the responsibility of the Board of Directors. The Board of Directors may delegate all or any portion of its authority to a manager or managing agent. The delegation shall be evidenced by a management contract which shall not exceed three (3) years in duration and which shall set forth such duties and responsibilities as the Board of Directors may from time to time determine. Generally, the Board of Directors shall have the power and authority to act for the Association unless the matter is specifically reserved to the Members in this Declaration or in the By-Laws.

### **SECTION 2. The Association's Responsibility.**

- (a) The Association shall provide, from the proceeds of assessments

received pursuant to Article VI of this Declaration, routine repair, maintenance and care for the following:

(1) All of the following located on the Common Area: driveways, buildings, walks, ponds, streams, waterfalls, other watercourse related improvements and other improvements and other recreational amenities, including fences and entranceways, and all trees, shrubs, grass and berms within the Common Area. The Association shall replace any tree or shrub within the Common Area if and when the need arises.

(2) All of the following located upon any Townhome Lot: exterior building surfaces including gutters, downspouts, exterior siding, trim (including painting of exterior window frames), decks and patios (except when enclosed by a fence constructed by the Owner or a predecessor Owner, as hereafter permitted), sidewalks and driveways (not including flaking, pitting, chipping, cracking, shaling, or disintegration of same), patio gates (except when the same are a part of a fence constructed by the Owner or a predecessor Owner as hereafter permitted), roofs (not including rafters), privacy fences not constructed by an Owner or predecessor Owner, the lawn sprinkler system, trees and shrubs, and all grass (mowing only). The Association shall not be responsible for the repair and maintenance of windows (other than the painting of exterior window trim), any glass surfaces of any kind, or any fences constructed by an Owner, or previous Owner. The Association shall not be responsible for any trees, shrubs or other plantings installed by any Owner or previous Owner although the Association may at its option trim the same along with other trees and shrubs maintained by the Association. Each Owner shall be responsible for the maintenance and replacement of any trees or shrubs planted by the Owner or the Owner's predecessor if they die or become unsightly. If the Owner fails to remove or replace any such dead or unsightly plantings the Association may do so and levy a specific assessment on the Owner's Townhome Residence (see Article VI Section 12 hereof) to pay the cost incurred by the Association in doing so.

(3) The Association shall provide snow and trash removal to the Townhome Lots.

(b) With respect to all categories of Lots, the frequency of and the materials to be used in the performance of all routine repair, maintenance and care shall be in the sole discretion of the Board of Directors and shall not be subject to the control of any Owner. Such materials shall in all cases be of a quality which is equal to or greater than the quality of the original materials used. In the event that the need for maintenance, care, repair, replacement, or extraordinary services to any Lot is caused by Owner modifications to the original design of a Lot, the addition of improvements by the Owner, or through the willful or negligent act of any Owner or the Owner's agent, family guests, Tenants, invitees or contractors, the cost of such maintenance, care, repair, replacement, or extraordinary services not covered by insurance shall be added to and become a specific assessment on the applicable Lot, in addition to the annual assessment to which the Lot is subject. The specific assessment must be paid by or on behalf of said Owner within thirty (30) days after written demand from the Board of Directors or the Association manager, and shall be secured by a lien and may be enforced as in the case of all other assessments.

(c) The Association may, but is not obligated to, provide additional services to Owners. The decision as to whether to provide any such service(s) shall be in the sole discretion of the Board of Directors and such service(s) may be terminated or modified at any time by the Board of Directors without the approval of the Class A Members.

(d) With respect to Townhome Residences, if any, completed after the date of this Declaration, the Association shall not be responsible for the repair or maintenance of any such Townhome Residence until a final certificate of occupancy is issued to the Owner thereof by the City of Overland Park, Kansas, and the Townhome Residence complies with all the provisions of this Declaration pertaining to its construction.

(e) In the event any Townhome Lot, or the Common Area are serviced with underground sprinkling systems for the watering of lawns and



grass areas, the Association may elect to enter into a contract or contracts with the water company whereby each Owner is charged for the Owner's responsible share of the cost of water used in connection with operating the sprinkling system, as determined in the discretion of the Board of Directors. For the purpose of entering into and administering such contracts, the Association is irrevocably appointed as attorney-in-fact for each Owner, which appointment shall be deemed a power coupled with an interest and shall be irrevocable without the consent of the Association. If any Owner fails to pay its share of the cost of water used in the sprinkling system, the Association may terminate service of the system to the Owner's Lot or otherwise assess the cost thereof against such Owner's Lot as a specific assessment.

(f) The Association may elect to enter into a contract or contracts with a trash removal company whereby each Owner is charged for the Owner's reasonable share of the cost of trash removal, as determined in the discretion of the Board of Directors. For the purpose of entering into and administering such contracts, the Association is irrevocably appointed as attorney-in-fact for each Owner, which appointment shall be deemed a power coupled with an interest and shall be irrevocable without the consent of the Association. If any Owner fails to pay its share of the cost of the trash removal, the Association may terminate trash removal service to the Owner's Lot or otherwise assess the cost thereof against such Owner's Lot as a specific assessment.

**SECTION 3. The Owner's Responsibility.** Each Owner shall maintain, repair and replace at the Owner's expense all portions of the Owner's Lot and Residence which are not an Area of Common Responsibility, including but not limited to all exterior doors, including garage doors; all glass surfaces of any kind; driveways and paved surfaces to the extent not maintained by the Association under Section 2(a) of this Article above; all appliances, heating, plumbing, electrical, air conditioning, air conditioning compressor and related facilities, fixtures, or installations; any portion of any utility services (including meters) located within the interior of the Owner's Residence; and all interior improvements and fixtures which are appurtenant to each Residence. Each Owner will bear responsibility for all breakage, damage, malfunction, painting, repair and maintenance of such items. Each Owner shall also maintain and keep in repair all fixtures and equipment

installed within a Residence, commencing at a point where the utility lines, pipes, wires, conduit or systems enter the exterior of the Residence. All Townhome Owners shall maintain such trees, bushes and other plantings for which they have responsibility under Section 2(a) of this Article above. OWNER'S RESPONSIBILITY TO MAINTAIN, REPAIR OR REPLACE PLUMBING OR UTILITY SERVICE LINES DOES NOT INCLUDE OR APPLY TO ANY PLUMBING, SEWER OR UTILITY SERVICE LINE THAT IS SHARED WITH ANY OTHER UNIT IN A BUILDING, THE RESPONSIBILITY FOR WHICH IS UPON THE ASSOCIATION AS PROVIDED IN ARTICLE IV.

SECTION 4. **The Developers' Responsibility.** Each Developer shall, at its own expense, maintain and care for all of those portions of **Rockwood Commons** owned by the Developer in full compliance with all statutes, laws, city ordinances and governmental regulations.

SECTION 5. **Residence Construction Requirements.** All Lots and Residences must comply with the following construction requirements:

- (a) No Residence shall be more than two stories in height.
- (b) All Residences shall have external driveways consisting exclusively of properly constructed concrete surfaces.
- (c) All Lots shall be fully sodded, except that no sodding shall be required where, in the opinion of the Architectural Review Committee, soil, lighting or topographical conditions would make sodding impractical or unreasonably expensive. This obligation shall not imply any duty to clear any Lot of trees, bushes, shrubs or natural growth which are kept reasonably attractive.
- (d) All Townhome Residences shall have a total finished ground floor area of not less than 1,800 square feet; all two story Townhome Residences shall have a finished ground floor area of not less than 900 square feet and total finished floor area of not less than 2,000 square feet; and all one and one-half story Townhome Residences shall have a finished ground floor area of not less than 1,300 square feet and a total finished floor area of not less than 2,000 square feet. All such measurements shall exclude garage areas, whether or not the same are

finished.

(e) All Residences shall have wood windows or wood clad windows. Composition shingles or better shall be installed and maintained on the roof of each Townhome Residence. All current roof shingles on existing Residences are hereby approved, but upon replacement of the same the new shingles shall meet the requirements set forth above. The Architectural Review Committee may approve other materials for the windows and roofs if the other materials are recognized by the Architectural Review Committee as being equal or superior to the materials described herein.

(f) The exterior finish of all Residences shall be limited to the following materials:

- (1) face brick or brick veneer;
- (2) natural stone or stucco;
- (3) board and batten siding of hardwood or cypress of one inch in thickness or greater; or
- (4) any material recognized by the Architectural Review Committee as being superior or equal to the materials described in 1 through 3.

Developer shall have the right to make minor deviations from these requirements so long as the construction materials actually used are consistent with the high quality and appearance of the **Rockwood Commons** residential neighborhood.

(g) All framing construction and materials on Residences must meet the requirements of all applicable building codes and other rules or regulations of the City of Overland Park, Kansas.

(h) All interior walls of Residences must be constructed or composed of either sheetrock or plaster of one-half inch or greater thickness, or wood or masonite paneling of one-fourth inch or greater thickness or

other material of equal or superior quality if approved in advance by the Architectural Review Committee.

(i) Fences on Townhome Lots are only allowed for the purpose of surrounding a patio area, and shall be no greater than six feet in height and in addition shall comply with the following:

(1) All fencing shall be wooden and shall be built with methods and materials which harmonize with the external design of Residences in **Rockwood Commons**.

(2) All fences shall comply with all ordinance requirements of the City of Overland Park.

SECTION 6. **Improvements and Alterations.** No Owner may paint or otherwise decorate or change the appearance of the exterior portion of the Residence or other improvements constructed on such Owner's Lot without the prior written consent of the Architectural Review Committee. Except for purposes of maintenance and repairs as provided in this Declaration, and except for basketball goals (which are hereby permitted), no building, fence, wall, sports equipment, machinery, or other improvements or structures shall be erected, placed, moved, or maintained on a Lot, nor shall any exterior addition, change of (including any change in specifications showing the precise and exact nature, kind, shape, height, setback, materials, color and location of such improvements have been submitted to and approved in writing by the Architectural Review Committee. In no event, however, shall the Committee (or, in the event of an appeal, the membership of the Association) have the right to deviate from the letter or spirit of this Declaration or approve any plans, specifications, improvements, alterations or other matters if such items are not consistent with the high quality of the construction and appearance of homes in **Rockwood Commons**.

SECTION 7. **Architectural Review Committee.** The Architectural Review Committee (hereinafter sometimes referred to as the "Review Committee"), if appointed by the Board of Directors, shall be composed of three (3) or more natural persons selected by the Board, who shall serve at the pleasure of the Board. In the event the Board of Directors fails to appoint the Review Committee, then the Board shall constitute the Review Committee. The affirmative vote of a majority of the Members of the Review Committee shall be required to adopt or promulgate any

rule or regulation or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Declaration. Decisions of the Review Committee shall be subject to appeal as provided in subsection (d) below.

(a) Upon approval by the Architectural Review Committee of any plans and specifications submitted to it, and upon approval by the applicable governmental agency authorized to issue building permits, a copy of the plans and specifications and a copy of all building permits as approved shall be placed in the permanent records of the Association. A copy of the plans, specifications and building permits shall be returned to the applicant. In the event the Review Committee fails to approve or disapprove any plans and specifications submitted to it, within sixty (60) days after the plans and specifications (and all other material and information required by the Review Committee) have been submitted to it, the plans and specifications shall be deemed to be approved and the applicant shall be deemed to have fully complied with this Article.

(b) An Owner shall commence construction or alterations in accordance with plans and specifications approved by the Architectural Review Committee within three (3) months following the date upon which the same are approved. In the event construction is not commenced within that time period, then approval of the plans and specifications by the Review Committee shall be conclusively deemed to have lapsed, and compliance with this Article shall again be required. No Owner shall deviate from plans and specifications approved by the Review Committee without the Review Committee's prior written consent. Approval for use on any Lot of any particular plans and specifications or design shall not be construed as a waiver or the Review Committee's right to disapprove the same or similar plans and specifications or any elements or features thereof with respect to other Lots.

(c) When an Owner completes any construction or alteration in accordance with plans and specifications approved by the Architectural Review Committee, the Review Committee shall, at the request of the Owner, issue a certificate of compliance which shall be prima facie

evidence that construction or alteration was approved by the Review Committee and is in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

(d) The Architectural Review Committee may from time to time adopt and promulgate rules and regulations regarding the form and content of plans and specifications to be submitted for approval, and may publish such statements of policy, standards, and guidelines, and may establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate. Any such rules and regulations shall be consistent with and shall be adopted with the intention and purpose of continuing and furthering the high quality of construction and appearance of homes in **Rockwood Commons**. No rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of this Declaration. The Review Committee may charge and collect a reasonable fee for examining any plans and specifications submitted for approval pursuant to this Article. The decisions of the Review Committee shall be final, but any Owner aggrieved by any action or forbearance from action by the Review Committee may appeal the Review Committee's decision to the Board of Directors, and shall be entitled to a hearing before the Board. The vote of two-thirds (2/3) of the Directors of the Board shall be required to reverse or otherwise modify any decision of the Review Committee.

(e) In the event any building, fence, wall, sports equipment or other improvements or structure is commenced, erected, placed, moved or maintained upon any Lot other than in accordance with this Article, then the same shall be in violation of this Article and upon written notice from the Review Committee the same shall be promptly removed. In the event the same is not removed or the violation is not otherwise terminated within thirty (30) days after the notice to the Owner, the Association shall have the right, through its agents and employees, to take such legal action as may be necessary to force the removal or termination of the violation. The costs of the action (including any and all legal and court costs incurred by the Association) may be assessed against the Lot upon which such

violation occurred as a specific assessment. Upon such an assessment, a statement for the amount thereof shall be sent to the Owner and the assessment shall become due and payable immediately. The assessment shall be a continuing lien upon the Lot and shall be a binding personal obligation of the Owner, in all respects and subject to the same provisions and limitations as provided in Article VI of this Declaration. The Association shall have the further right, through its agents, employees or designee, to enter upon and inspect any Lot at any reasonable time for the purpose of ascertaining whether any violation of this Article or any of the other provisions or requirements of this Declaration exists. Neither the Association nor any agent, employee or designee shall be deemed to have committed a trespass or other wrongful act be reason of the entry or inspection.

(f) This Article may not be amended without the prior written consent of the Developer so long as the Developer own(s) any real property within **Rockwood Commons**.

SECTION 8. **Right of Entry**. The Association shall have the right to enter upon any Owner's Lot for the purpose of curing any violation of this Declaration or any rule or regulation of the Association, but the Association shall first provide to the Owner notice of the violation and a reasonable opportunity to cure the same. All costs and expenses incurred by the Association in connection with acts taken to cure any violation shall be charged to the Owner as a specific assessment under the provisions of Section 12 of Article VI.

## ARTICLE VIII

### **PARTY WALLS**

SECTION 1. **General**. Townhome Residences, have or will have, at least one wall in common with an adjoining Townhome Residence, which common wall or walls has been or will be built on a dividing line between Townhome Lots. Each such common wall shall be a party wall and the rights and obligations of the Owners of the party walls shall be as follows:

(a) To the extent not inconsistent with this Article, all laws

applicable to party walls and liability for property damage due to negligence or willful acts or omissions in the State of Kansas, shall apply. No Owner shall cut through or make penetration through a party wall for any purpose whatsoever.

(b) The cost of reasonable repair and maintenance of any party wall shall be shared by the Owners who make use of such wall, except any repair and maintenance required to be made by the Association.

(c) If a party wall is damaged or destroyed by fire or other casualty, then to the extent that the damage is not covered by insurance and repaired out of insurance proceeds, the party wall shall be repaired or replaced by the Owners who make use of the wall and the cost of any repair or replacement shall be borne by them equally, without prejudice, however, to the right of either Owner to demand a larger contribution from the other under any rule of law regarding liability for negligence, willful acts or omissions.

(d) Notwithstanding any other provision of this Article, to the extent that damage to a party wall is not covered and paid for by insurance provided for herein, an Owner, who by such Owner's negligence or willful act causes or permits any party wall or portion thereof to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against the elements and for the repair to the wall.

(e) The right of any Owner to contributions from any other Owner, under this Article, shall be appurtenant to the Lot and shall pass to the Owner's successors in title.

(f) In the event of any dispute arising concerning any party wall, the resolution shall be determined by the decision of a majority of the Board of Directors. As an alternative method of solving the dispute, the Board of Directors may select one or more arbitrators who shall have the authority to settle the dispute, pursuant to rules of arbitration as the Board of Directors may determine. The determinations by the Board of Directors or arbitrators shall be binding and conclusive on the parties. If one of the parties to the dispute is a Member of the Board of Directors, the arbitration method must be used to settle the dispute.



## ARTICLE IX

### EASEMENTS

SECTION 1. **Utility Easements.** The Developer has or will install or cause to be installed lines, pipes, conduits, and other utility facilities, hereinafter referred to as "utility lines", for the purpose of providing sewer, electricity, gas, water, and telephone services to the Lots, and to the Common Area. To insure that the utility lines shall be installed, kept, maintained, restored, repaired and replaced, the Developer hereby reserve(s) unto itself, and grant(s) to the Association, an easement to install, keep, maintain, restore, repair, and replace any utility lines under and across the Common Area and all individual Lots.

(a) If, in order to maintain, restore, repair or replace any utility lines or other utility equipment that serves more than one Townhome Residence, it becomes necessary to break through walls, excavate or otherwise damage a Townhome Residence or Common Area, the damages caused by the entry shall be repaired, and the Townhome Residence or Common Area entered, shall be restored to substantially the same condition as prior to the damage. Unless caused by the negligence or willful act of an Owner, the cost of the restoration shall be an expense of the Association. Expenses applicable to removal of obstructions in a sewer line from the basement floor to the top floor of a Townhome Residence, shall be assumed and paid by the Owner thereof, not the Association.

(b) If it becomes necessary to maintain, restore, repair, repair or replace, any utility lines which serve more than one Townhome Residence, then the cost of the maintenance, restoration, repair or replacement to its former condition, shall be that of the Association.

SECTION 2. **Easements for Minor Encroachments.** If construction, reconstruction, repair, shifting, settlement, or other movement of any portion of any Townhome Residence unintentionally results either in the Common Area encroaching on any Townhome Lot, or in a Townhome Lot encroaching on the Common Area or on another Townhome Lot, a valid easement shall exist for both the encroachment and its maintenance. In no event, however, shall an easement for encroachment exist if the encroachment occurred due to willful and knowing conduct on the part of an Owner, a Tenant, or the Association. The easement shall

exist for whatever period the encroachment exists.

SECTION 3. **Blanket Easement.** The Developer hereby reserve(s) unto itself and grant(s) to the Association a blanket easement upon, across, over and under all of the Lots except for that portion of the Lots upon which a Residence exists, for ingress to and egress from, installment, operation, replacement, repair and maintenance of utilities, including, but not limited to, water, sewer, telephone, television, electricity, gas, cable television and drainage facilities, together with the right to remove any obstruction that may be placed in the easement area that would constitute interference with the use of the easement or with the use, maintenance, operation or installation of such utilities or drainage facilities. The Developer reserve(s) the right to convey all or part of the easement created herein to any public or private utility company or public entity in furtherance of the purposes described herein. Notwithstanding anything to the contrary contained in this paragraph, or in this Declaration, no sewer, electrical line, water line, or other utilities may be installed or relocated upon **Rockwood Commons**, until approved by the Developer so long as the Developer own(s) any real property within **Rockwood Commons**, and thereafter by the Architectural Review Committee. Neither the Developer, nor any utility company or other authorized entity using the easements created by this Declaration shall be liable for any damage to shrubbery, trees, flowers, grass, or other improvements located on the property covered by the easements, but such entity shall take due care to avoid destroying or damaging any plantings or improvements, or to minimize any damages.

SECTION 4. **Utility Lines in Townhomes.** Owners of Townhome Lots shall not be deemed to separately own pipes, wires, conduits or other services lines, running though their property, which are utilized for or serve other Townhome Lots, or the Common Area, but each Townhome Lots Owner, shall have an easement in and to the lines as shall be necessary for the use, maintenance and enjoyment of such Owner's Townhome Residence, subject to such rules and regulations as may be established by the Board of Directors. No Owner of a Townhome Lot may disconnect any utility line, and all Owners of Townhome Lots are prohibited from intentionally interrupting the utility services rendered to other Owners of a Townhome Lot or the Common Area. All expenses incurred by the Association in reconnecting or repairing utility services the result of intentional disruption of such service by an Owner of a Townhome Lot shall be assessed against and shall be immediately due from the Owner, as a specific assessment. All expenses for the maintenance shall be paid from the annual assessments received

by the Association.

SECTION 5. Easement for Ingress and Egress. The Developer hereby create(s) and reserve(s) to itself, and hereby grant(s) to the Association, for the benefit of each Lot Owner, an easement for ingress to and egress from each Lot over and across all the Common Area.

SECTION 6. Easement for the Association. The Declarant hereby establishes and reserves to itself, and hereby grants to the Association an easement over, under and across, all of the Lots for the purposes of executing any of the powers, rights or duties, granted to or imposed upon the Association by the terms of this Declaration, its Articles of Incorporation, or its By-Laws.

SECTION 7. Driveway Easements. Certain driveways providing access to and from a Townhome Lot may be located in part upon another Townhome Lot. In addition, certain driveways may provide access to and from more than one Townhome Lot. In order to assure free and unrestricted use by each Owner of a Townhome Lot of the driveway facilities serving the Owner's Lot, Declarant hereby creates and grants to each Owner of a Townhome Lot a non-exclusive easement for unrestricted access to and from the Owner's Lot over and across any driveway which serves the Owner's Lot, but is located on any other Townhome Lot. Declarant also hereby creates and grants to each and every Owner of a Townhome Lot whose Townhome Lot is served by a driveway, which serves more than one Townhome Lot, an easement for unrestricted access to and from such Owner's Lot, over and across that portion of the driveway serving said Owner's Lot, which also serves any other Owner's Lot. No Owner of a Townhome Lot shall park any vehicle upon that part of any driveway serving another Townhome Lot, unless the parking is first approved by all Owner's sharing the driveway. In no event shall an Owner be permitted to park any vehicle in such a manner as to prevent, hinder or interfere with access to and from any other Owner's Townhome Lot.

## ARTICLE X

### USE RESTRICTION

SECTION 1. Uses Permitted in Residences. The improvements constructed on each Lot shall be used solely for a private Residence of no more than one (1) family unit. NO professional, business or commercial use shall be made of any

improvements, except that part of the improvements on a Lot may be used as an office by the Owner thereof, to the extent permitted by applicable laws, and with the prior written consent of the Board of Directors, in conjunction with the use of the improvements as a one-family Residence and purely as a ancillary use, with no regular customers or inviting of customers to such improvements, or signs or advertising of any type, on or off the Lot. Except for short term leases by a Developer, prior to a sale of a Residence, no Residence may be rented or leased for a period of less than thirty (30) days nor more than one (1) year without the prior approval of the Board of Directors, which may, in its sole discretion, and without cause, withhold such approval. Moreover, the leasing or rental of a Residence for residential purposes shall be considered to be a violation of this covenant unless made in accordance with rules and regulations promulgated by the Board of Directors with respect to leases and rentals, which may contain a requirement that an Owner obtain the written approval of the Board of Directors prior to attempting to rent or lease such Owner's Residence. The Board of Directors shall have the authority to promulgate additional rules and regulations governing the leasing and rental of Residences, and the use and occupancy thereof by Tenants as the Board of Directors, in its sole discretion, deems necessary or desirable.

SECTION 2. **Other Structures.** No structure of a temporary character, and no trailer, vehicle, basement, tent, shack, playhouse, shed, garage, barn or other buildings, shall be erected, used or maintained at any time upon any Lot or the Common Area without the prior written consent of the Architectural Review Committee.

SECTION 3. **Signs.** No signs of any type shall be hung or displayed either on the inside or the outside of any Residence or otherwise so as to be seen from the exterior; provided, however, that one "For Sale" sign at any one time, may be displayed by or on behalf of an Owner, on such Owner's Lot and, in the case of the Townhome Lot, solely in the area in front of such Owner's Townhome Residence, until the same is sold, all in accordance with the laws of the City of Overland Park, Kansas.

SECTION 4. **Unsightly or Unkempt Conditions.** It shall be the responsibility, of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on the Owner's Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause the Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the

eye. No substance, thing, or material, shall be kept on any Lot that will emit foul or obnoxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be permitted on any Lot or in any Residence, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using surrounding property. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of **Rockwood Commons**. All woodpiles, shall be located or screened so as to be concealed from view of neighboring Lots, streets, and adjacent property. No outdoor clothes dryers or lines, billboards, radio or television transmitting or receiving antennas, satellite dishes or towers, exterior lighting, awnings, canopies, shutters, unsightly objects or nuisances shall be erected, affixed to, installed, placed or permitted on any Lot, or upon any exterior wall, window or roof, of any Residence, or other improvements constructed on any Lot, without the prior written consent of the Architectural Review Committee. NO Owner shall permit his or her Lot or Residence to become infested with wood boring or other insects or vermin.

SECTION 5. **Storage**. No exterior storage of any type shall be allowed at any time on any Lot and nothing shall be stored in such a manner as to be exposed to public view, except with the prior written consent of the Architectural Review Committee. No liquid fuel storage tank with a capacity in excess of two gallons may be maintained upon any Lot. Storage within a garage shall not be so great as to cause an Owner to not use the Owner's garage for the purpose of parking the Owner's vehicle.

SECTION 6. **Vehicle Repair**. No major repair, rebuilding, or maintenance of any vehicle shall be permitted except within an Owner's private enclosed garage, if any. No major repair, rebuilding or maintenance of any vehicle, shall be permitted in open parking areas or carports. This includes, but is not limited to automobiles, trucks, campers, trailers and boats. No non-operable vehicle of any kind, nor any vehicle without current license tags, may be kept on any yard, driveway, or street in front of any Lot, at any time.

SECTION 7. **Animals Kept as Pets**.

- (a) No dog or other animal pen, kennel, or run may be maintained

at any time or place on a Townhome Lot. No animal shall be kept tied to any structure outside the Residence or other improvements constructed on a Lot. No animals, livestock, or poultry of any kind, shall be raised, bred, kept or maintained, at any time or place, except in the types and numbers listed below:

1. Not more than two (2) canines, of the specie "Canis Familiaries".
2. Not more than two (2) felines, of the specie "Felis Catus".
3. Any number of Non-Carnivorous fish.
4. Not more than four (4) amphibians, less than one (1) foot in length.
5. Not more than four (4) non-poisonous reptiles, less than three (3) feet in length.
6. Not more than four (4) fowl customarily kept in the home as a pet, but not including, chickens, turkeys, or pigeons.
7. Not more than six (6) animals weighing, three (3) pounds or less, of the order Rodentia including, but not limited to, gerbils, hamsters, guinea pigs, mice, white rats, squirrels, or chipmunks.

(b) The above-listed animals shall not be raised, bred, kept or maintained for any commercial purposes. No more than a total of six (6) animals from the above list shall be kept on a Lot or in a Residence, the total not to include non-carnivorous fish, or the offsprings of any other listed animal within eighteen (18) weeks from the date of the birth of such offspring. Owners must also comply with any and all laws and ordinances relating to animals, including without limitation, licensing, vaccinations, immunizations and applicable leash laws. All animals in a Townhome Residence must be confined at all times within the interior of the Townhome Residence, or on a leash under the direct supervision and control of the Owner. Owners shall prevent their

animals from barking and from making loud or raucous noises to the disturbance of other Owners. Notwithstanding the permissions set forth above, the Board of Directors shall have the absolute power to prohibit an animal from being kept on or in a Lot.

SECTION 8. **Garbage.** All rubbish, trash, garbage, or unsightly debris shall be kept so as not to be seen from the neighboring Lots, and streets (except on collection days).

SECTION 9. **Adverse Acts.** An Owner of a Lot shall do no act nor any work that will impair the structural soundness or integrity of such Owner's or another Residence or impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots and Residences or their Owners.

SECTION 10. **Vehicle Parking.** Only one (1) automobile may be parked on an Owner's driveway, except for automobiles, and trucks with a capacity not exceeding one-half (1/2) ton, or visitor's temporarily parking thereon in accordance with rules and regulations promulgated by the Board of Directors. Trucks with a capacity not exceeding one-half (1/2) ton, belonging to Owners, their families or Tenants, shall be parked or stored within the Owner's garage. No vehicle shall be parked on any street, except temporarily, and in no event shall any vehicle be regularly parked continuously for more than twenty-four (24) hours on any street. No vehicles shall be parked on streets or driveways so as to obstruct ingress and egress by Owners, their families, Tenants, guests, and invitees, except for the reasonable needs of emergency, construction, or service vehicles, and then limited to as brief a time as possible. Except for the reasonable needs of emergency, construction, delivery or pickup, or service vehicles, no truck with a capacity exceeding one-half (1/2) ton shall be permitted to park in **Rockwood Commons**, except as provided hereinafter. No boat, camper, trailer, commercial truck, truck with a capacity exceeding one-half (1/2) ton, mobile home, or self-propelled recreational vehicle of any type whatsoever may be parked, stored, or kept within **Rockwood Commons**, except within the confines of a storage area, if any, designated by the Association for such purposes, and except for a period of time reasonably necessary for loading or unloading of personal property by an Owner. A reasonable storage fee may be charged by the Association for parking within the storage area. No person shall be allowed to cook or sleep in any vehicle or trailer, at any time, or for any reason whatsoever, when such vehicle or trailer is located in

## **Rockwood Commons.**

SECTION 11. **Planting and Gardening.** No planting or gardening shall be done, and no fences, hedges or walls, shall be erected or maintained on Townhome Lots, except as approved by the Architectural Review Committee. No chain link boundary fences shall be allowed upon any Lot.

SECTION 12. **Sound Devices.** No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon any Lot, except for security purposes. The Board of Directors may promulgate rules and regulations which provide, among other things, that a vacationing or otherwise absent Owner must provide the Association with access to the Owners security system to permit the Association to silence any audible alarm which may disturb the neighborhood during the Owner's absence.

SECTION 13. **Power Lines.** No power, cable television, telephone distribution, or service connection lines or equipment may be erected or maintained above the surface of the ground on any Lot, without the prior written consent of the Architectural Review Committee.

SECTION 14. **Building Projection.** No Residence or any other improvements located on a Lot, or any part thereof, shall be nearer the street line than any building set back lines shown on the recorded plats of **Rockwood Commons**, without the prior consent of the Architectural Review Committee.

SECTION 15. **Garages.** All garages shall be attached to a Residence, or qualify as a basement garage.

SECTION 16. **Swimming Pools.** No swimming pools or appurtenances thereto, may be built, constructed or erected on Lots which are smaller than 15,000 square feet in area. Even on Lots of that size or greater, no swimming pool or appurtenances may be built, constructed or erected, without the prior written consent of the Architectural Review Committee. Any pool permitted and allowed shall be properly maintained at all times. When inoperable, swimming pools must be covered with flat storage covers to protect the pool from leaves, debris, and animals. No pool enclosures, or air structures, air bubbles, or air covers, shall be allowed at any time. No pool fences or appurtenant structures shall be allowed without the prior written consent of the Architectural Review Committee. The



foregoing provisions shall not apply to the pool facility owned by the Association.

SECTION 17. **Insurance Risks.** Nothing shall be done or kept in **Rockwood Commons** which will increase the rate of insurance payable by the Association, or individual Owners, without prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept on the Owner's Lot, in the Owner's Residence, or the Common Area, which will result in the cancellation of insurance on any Lot, Residence or any of the Common Area, or which would be in violation of the Law.

SECTION 18. **Exception from Use Restrictions.** The foregoing covenants or this Declaration shall not apply to the activities of the Developer or Association. The Developer may maintain, while selling Lots, such facilities as it in its sole discretion, may deem necessary or convenient, including, but without limitation, offices, storage areas, model Residences, and signs. The activities of the Developer shall, however, be subject to good and sound business judgment, and shall be undertaken in such a manner as not to (a) cause damage to or impair the Owners' quiet and peaceful enjoyment of the **Rockwood Commons** community, and (b) impair or diminish property values in the **Rockwood Commons** neighborhood.

SECTION 19. **Association's Standards.** The Association, acting through its Board of Directors, shall have authority to make and enforce standards, and use restrictions applicable to **Rockwood Commons**, in addition to those contained herein, and to impose reasonable user fees, for facilities, including, but not limited to, vehicle storage areas, swimming pools, tennis courts, community center, and parking facilities, if any.

SECTION 20. **Occupants.** All provisions of this Declaration and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Tenants or other occupants of any Residences constructed on any Lot.

## ARTICLE XI

### **GENERAL PROVISIONS**

SECTION 1. **Amendment.** The covenants, conditions and restrictions of this Declaration, shall run with and bind **Rockwood Commons**, and shall inure to the

benefit of and be enforceable by the Association, or any Owner, for a term of thirty (30) years after the date this Declaration is recorded, after which time these covenants, conditions and restrictions shall be automatically extended for successive periods of fifteen (15) years, unless Owners representing sixty-seven percent (67%) of the votes held by Class A Members have signed and recorded an instrument abolishing or changing the covenants, conditions and restrictions in whole or in part. No such instrument shall be effective, however, unless made and recorded six (6) months in advance of its effective date. Furthermore, no such instrument shall be applicable to the then existing Residences and other improvements in **Rockwood Commons**, and no change shall be effective on less than thirty (30) days prior notice to the Owners.

SECTION 2. **Amendment by Declarant.** So long as the Developer is (a) Class B Member of the Association, the Developer shall have the right, but not the obligation, to amend or modify the covenants, conditions and restrictions of this Declaration without providing notice to or obtaining the consent of any Class A Members of the Association. The Developer adopting the amendment shall send a copy of it to all of the Owners promptly after the same is adopted.

SECTION 3. **Amendment by Owners.** Except as provided in Sections 1 and 2 of this Article, the covenants, conditions and restrictions of this Declaration may be abolished, amended, or changed in whole or in part only with the consent of Owners representing at least (a) sixty-seven percent (67%) of the votes held by Class A Members who own Lots or Residences which are affected by the amendment (an amendment affecting all categories of Lots or Residences must be approved by sixty-seven percent (67%) of all Class A Members); and (b) sixty-seven percent (67%) of the Class B Member(s) of the Association. Any such amendment, change or abolition, shall be evidenced by a document in writing bearing the signatures of all of the Members voting in favor of the same.

SECTION 4. **Enforcement.** The Association or any Owner may enforce these covenants, conditions and restrictions, by a proceeding at law, or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain the violation or to recover damages, or to enforce any lien created herein against a Lot. Failure by the Association, or any Owner, to enforce any covenant, condition or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 5. **Compliance by First Mortgagees.** First Mortgagees may, jointly or singularly, pay overdue premiums on hazard insurance policies acquired by the Association, or secure new hazard insurance coverage on the lapse of a policy acquired by the Association covering any Common Area, and the Association shall owe immediate reimbursement to any First Mortgagees making such payments.

SECTION 6. **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 or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

SECTION 7. **Severability.** Invalidation of any one of these covenants, conditions or restrictions, by judgment or court order, shall not affect in any way, the other provisions contained herein, which shall remain in full force and effect.

SECTION 8. **Notices.** All notices required to be given hereunder shall be sent by Certified Mail, Return Receipt Requested, addressed to the Association, at the address of its Registered Agent, or such other address as may be filed of record by the Association, in the office of the Register of Deeds for Johnson County, Kansas; addressed to an Owner, at the street address assigned to such Owner's Residence, by the City of Overland Park, Kansas, or, if a Residence has not been constructed on an Owner's Lot, at the current address of such Owner, as shown on the tax rolls of Johnson County, Kansas, for the Owner's Lot; addressed to the Developer, at P.O. Box 26007 Shawnee Mission, Ks 66225; and addressed to any First Mortgagee, at the last address for such First Mortgagee contained in the files of the Association. Any notice may be delivered by any other means, if actually received by the intended recipient.

SECTION 9. **Captions.** Captions provided herein for Articles or Sections are inserted only for convenience and are not to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

SECTION 10. **Construction and Sale Efforts.** Notwithstanding any provisions contained in this Declaration to the contrary, so long as the sale of Lots by the Developer within **Rockwood Commons** shall continue, the Developer is expressly permitted to maintain and carry on such facilities and activities upon

portions of **Rockwood Commons** as, in the sole opinion of the Developer, may be reasonably required, convenient, or incidental to such sale, including, but not limited to, business offices, signs, model units, and sales offices. The Developer shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Lots owned by the Developer or the Association, and the improvements which may be owned by the Developer or the Association, as models and sales offices. This Section, may not be amended without the express written consent of the Developer. The right contained herein shall terminate upon the earlier of fifteen (15) years from the date this Declaration is recorded, or upon the Developers' recording a written statement that all sales activity has ceased.

**SECTION 11. Limitation of Liability** The Association and the Developer shall not be liable for any failure of any services to be obtained by the Association or the Developer, or paid for out of the annual, special or specific assessments levied upon Owners; or for injury or damage to person(s) or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Area; or from failure of any wire, pipe, drain, conduit, utility line, or the like. The Association and the Developer shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Area. No diminution or abatement of annual or special assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area, or from any action taken by the Association and the Developer, in accordance with any of the provisions of this Declaration, or with any law, ordinance, order, or directive, of any municipal or other governmental or quasi-governmental authority. Neither the Association nor the Developer nor any of their employees, agents, or consultants, shall be responsible in any way, for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications including, without limiting the generality of the foregoing, waterfalls, ponds, and other water course related improvements, and construction of Residences or other improvements on the Lots.

**SECTION 12. Successors of Developer**. Any and all rights, reservations, interest, privileges and powers of the Developer hereunder, may be assigned and transferred by the Developer. The Developer shall give prompt notice to the Association after any such transfer(s).

SECTION 13. Miscellaneous Expenses. Whenever an Owner, such Owner's Tenant or such Owner's mortgagee requests any information pursuant to the terms of this Declaration, all reasonable expenses, including postage and photocopy expenses, incurred by the Association in providing such information will be paid by the party requesting the same.

IN WITNESS WHEREOF, **Rockwood, LLC**, being the Declarant herein, has caused this instrument to be executed in its name and on its behalf by Member duly authorized thereunto this 23 day of June, 2005.

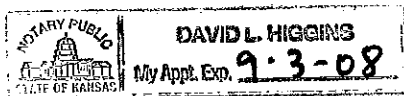
**ROCKWOOD, LLC**

By Richard A. Pfaff  
Richard A. Pfaff, Member

STATE OF KANSAS                    )  
  ) SS:  
COUNTY OF JOHNSON            )

On this 23 day of June, 2005, before me appeared RICHARD A. PFAFF, to me personally known, who being by me duly sworn, did say that he is a Member of **ROCKWOOD, LLC**, a Limited Liability Company, and said instrument was signed and sealed in behalf of said Limited Liability Company by him as a Member and, acknowledged said instrument to be the free act and deed of said Limited Liability Company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 23 day of June, 2005.



David L. Higgins  
Notary Public

My Appointment Expires:

DLH:tb/3287


**EXHIBIT "A"**

**Legal Description of  
Rockwood Commons**

A tract of land in the Southwest Quarter of Section 7, Township 14, Range 25, in the City of Overland Park, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Southwest corner of the Southwest Quarter of said Section 7; thence N 87°43'24" E, along the South line of the Southwest Quarter of said Section 7, a distance of 1639.88 feet to the Point of Beginning; thence N 2°12'57" W, along the East plat line of HOLLY RIDGE TOWNHOMES, a platted subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 510.00 feet; thence N 87°43'24" E, continuing along said East plat line, a distance of 329.13 feet; thence N 2°12'28" W, continuing along said East plat line, a distance of 153.28 feet; thence N 87°51'24" E, along the South plat line of THE RIDGE AT PINEWOOD, FOURTH PLAT, a platted subdivision in the City of Overland Park, Johnson County, Kansas, a distance of 679.58 feet; thence S 2°12'28" E, along the East line of the Southwest Quarter of said Section 7, a distance of 67.99 feet; thence S 87°43'24" W, a distance of 328.71 feet; thence S 2°12'28" E, a distance of 593.71 feet to a point on the South line of the Southwest Quarter of said Section 7; thence S 87°43'24" W, along said South line, a distance of 679.93 feet to the Point of Beginning, containing 9.7083 acres, more or less, of unplatted land.

DLH:tb/3292

  
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