

## GRAND RIDGE AT GRAND MERE COMMUNITY DECLARATION

THIS DECLARATION, made on this 14<sup>th</sup> day of June, 2001, by Grand Mere Development, Inc. (hereafter referred to as "Developer") pursuant to the provisions of the Kansas Townhouse Ownership Act for the purpose of submitting the real estate which is hereinafter described and the improvements located or to be located thereon to the provisions of the Kansas Townhouse Ownership Act, and for the additional purpose of submitting said real estate to the easements, covenants, conditions, and restrictions hereafter stated.



### ARTICLE I

#### Submission of Real Estate to Kansas Townhouse Ownership Act

Developer is the record owner of the following-described real estate located in the City of Manhattan, Kansas:

See Attached Exhibit "A"

*pg 8448*

BOOK: 797.00 PAGE: 8,406.00

which Developer submits to this Declaration and to the provisions of the Kansas Townhouse Ownership Act.

REST.

\$100.00

4:35:46 PM, 6/20/01

Receipt No.: 3646

STATE OF KANSAS RILEY COUNTY

RECORDED BOOK 797 PAGE 8406  
M. CHARLOTTE SHAWVER, REG. OF DEEDS

### ARTICLE II

#### Definitions

The terms used in this Declaration shall have the meanings stated in the Kansas Townhouse Ownership Act, K.S.A. 58-3701 through 58-3713, as such act may be amended from time to time, and which is hereinafter referred to as the Townhouse Ownership Act, and as follows, unless the context otherwise requires.

- 2.1 Board of Directors or Board means the Board of Directors of the Grand Ridge Community Association.
- 2.2 Building means a structure within the properties composed of one or more Townhome Units.
- 2.3 Bylaws means the Grand Ridge Community Association Bylaws.
- 2.4 Common Areas and Facilities or Common Areas means and includes all areas of land on the Plat other than the Lots, hereinafter defined, together with the following:
  - (a) All recreational facilities, structures, trees, landscaping, or other improvements located upon real estate owned by the Association;

- (b) All drives and parking areas located upon real estate owned by the Association;
- (c) All installation of central services, if any, for the benefit of more than one Townhome Unit Owner, such as trash receptacles, pipes, wires, conduits, and other public utility lines and facilities;
- (d) All easements, rights, and appurtenances thereto necessary for the existence, maintenance, and safety of the Townhome Units;
- (e) All personal property owned by the Association intended for use by the Association in the exercise of its powers as set forth in this Declaration.

2.5 Common Expenses means and includes:

- (a) Expenses of administration; insurance expenses; outside lighting expenses and maintenance; and expenses incurred in the maintenance, operation, repair, and replacement of the Common Areas and Facilities and the portions of the Townhome Units to be maintained by the Association;
- (b) Expenses declared common expenses by the Association and assessed against the Townhome Unit Owners; and
- (c) Expenses declared common expenses by provisions of the Townhouse Ownership Act.

2.6 Community means the land described on Exhibit "A" together with any annexation property, and the residential development thereon.

2.7 Community Association means the Grand Ridge Community Association, a Kansas corporation not organized for profit.

2.8 Declaration means this instrument submitting the Properties to the Townhouse Ownership Act.

2.9 Design Review Committee (DRC) means the committee provided for in Article 21, entitled "Architectural and Landscape Control."

2.10 Developer means **Grand Mere Development, Inc.**, its successors and assigns.

2.11 Golf Course shall mean the Colbert Hills Golf Course constructed on the real property which is located adjacent to the Townhome Units.

2.12 Lot means and refers to the lots as shown and numbered on the Plat.



- 2.13 Master Association shall mean Grand Mere Property Residential District Master Association, a Kansas corporation not organized for profit, its successors and assigns, which is responsible for implementing the terms of the Master Declaration.
- 2.14 Master Declaration shall mean that certain Declaration of Easements, Covenants, Conditions, and Restrictions for the Grand Mere Property District, Recorded January 9, 2001, in Book 791 at Page 276 in the Office of the Register of Deeds of Riley County, Kansas, to which the Association is also subject, including any amendments and supplements thereto and modifications thereof.
- 2.15 Person(s) means a natural individual(s), corporation, partnership, trustee, or other legal entity capable of holding title to real property.
- 2.16 Plats means the plats of survey of the above-described real estate which have been filed in the Office of the Register of Deeds of Riley County, Kansas, and are incorporated herein by reference.
- 2.17 Properties means all the land, property or properties, and space; all improvements and structures erected, constructed, or contained therein or thereon, including the buildings and all easements therein or thereon, and all rights and appurtenances belonging thereto; and all fixtures and equipment intended for the mutual use, benefit, or enjoyment of the Townhome Unit Owners, and which have been submitted to the provisions of the Townhouse Ownership Act by this Declaration or by amendments thereto in accordance with Article 20 of this Declaration, and to the easements, covenants, conditions, and restrictions herein stated.
- 2.18 Townhome Unit means a unit defined by the Townhouse Ownership Act and as described in Article 3 of this Declaration.
- 2.19 Townhome Unit Owner or Owner means a unit owner as defined by the Townhouse Ownership Act.

### ARTICLE III

#### Description of Townhome Units

The Townhome Units are identified and described on the Plat, which is by reference made a part hereof and shall be part of a Building joined together by a common or party wall having a common roof and foundation.

## ARTICLE IV Property Rights

- 4.1 Ownership of Townhome Units. Upon recording this Declaration and the Plat, the Properties shall become subject to the provisions of this Declaration, the Townhouse Ownership Act, and the easements, covenants, conditions, and restrictions stated herein. All Townhome Units shall thereupon be capable of ownership in fee simple or any lesser estate, and may thereafter be conveyed, leased, mortgaged, or otherwise dealt with in the same manner as other real property, but subject, however, to the provisions, conditions, and limitations imposed by the Townhouse Ownership Act, this Declaration, the Bylaws of the Association, the rules and regulations of the Association, and the easements, covenants, conditions, and restrictions herein stated.
- 4.2 Townhome Unit Owners' Easements of Enjoyment. Every Townhome Unit Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to, shall pass with the title to every Townhome Unit, and shall be subject, however, to the following limitations:
- (a) The rights of the Master Association under the Master Declaration noted above.
  - (b) The right of the Developer and of the Association, in accordance with the Articles and the Bylaws, to borrow money for the purpose of improving the Common Area and in aid thereof to mortgage all or any part thereof. Any such mortgage shall provide that in the event of a default, the lender shall have no rights that shall in any way impede, limit, or restrict the right and easement of a Townhome Unit Owner to the use of the Common Area for the unrestricted ingress and egress to and from his or her Townhome Unit.
  - (c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas and Facilities against foreclosure.
- 4.3 Delegation of Use. Any Townhome Unit Owner may delegate his or her right of enjoyment of the Common Area and Facilities to the members of his or her family, his or her tenants, or contract purchasers who reside in his or her Townhome Unit.
- 4.4 Easements. In addition to easements hereinbefore or hereinafter specifically created or reserved, the following easements are hereby created or reserved:
- (a) An easement is hereby created in favor of the Association, permitting it to enter into or upon any Lot, Building, or Townhome Unit for the purpose of performing its powers and duties as delineated herein, and in the articles of incorporation and Bylaws. The right established in this paragraph shall be exercised in a reasonable manner. Public utilities furnishing services for common use, such as water,



electricity, gas, sewerage, telephone, and cable television, to the Properties shall have access to the Common Areas and Facilities, the Lots, the Buildings, and the Townhome Units as may be necessary for the installation, repair, or maintenance of such services.

- (b) A party wall easement is hereby established over that part of any Townhome Unit in which any part of a common wall between Townhome Units is constructed, together with the right to restore any such party wall, and such party wall may contain plumbing lines, vent stacks for plumbing and heating, electricity pipes and conduits, and fireplace flues, serving improvements using such party wall. The party wall easement shall be a cross-easement in favor of each Townhome Unit in which is located a common or party wall.
- (c) There is reserved for the benefit of each Townhome Unit, as dominant tenement, such portion of the Properties and each other Townhome Unit jointly as the servient tenement, as shall be encroached upon, used, and occupied by the Owner of the dominant tenement as a result of any construction errors, errors in survey, errors in platting, movement, or subsidence of a Townhome Unit or Building or any portion thereof.
- (d) An easement for utility services is hereby reserved for the benefit of each Townhome Unit which is a part of a Building which contains two or more Townhome Units joined together by a common or party wall, as dominant tenement, over, under, and through the properties and each other Townhome Unit in such building as the servient tenement.
- (e) Until ninety-five percent (95%) of all land that is residential in nature (including land within any Annexation Property) as shown on the Master Plan, has been sold to third parties, and Developer owns less than two (2) acres of land that is residential in nature as shown on said Master Plan, Developer reserves an easement and right on, over, and under the Properties, for the purpose of maintaining and correcting drainage of surface water in order to avoid erosion and to ensure reasonable standards of health, safety, and appearance. Such easement expressly includes the right to cut any trees, bushes, or shrubbery, to make any gradings of the soil, or to take any other similar action reasonably necessary for such purposes, following which Developer shall restore the affected property to its original condition to the extent reasonably practicable. Developer shall give reasonable notice of its intent to take any such action provided under this subparagraph to all affected Townhome Unit Owners, unless in the sole discretion of Developer an emergency exists which must be remedied before such notice could reasonably be given.
- (f) The following additional easements are also created and established over, under, and across all Townhome Units:



- (1) For the purpose of draining snow and rain water from the roof of any part of a building containing more than one Townhome Unit through gutters, downspouts, and drains located on any other part of such building.
- (2) For the purpose of supporting a roof of any Townhome Unit which is a common roof of such Townhome Unit and another Townhome Unit.
- (g) An easement of access is granted to the Master Association and to Grand Mere Development, Inc., for purposes of determining compliance with these covenants and the Master Association Declaration and covenants.
- (h) All easements and rights herein established shall run with the land and shall inure to the benefit of and be binding upon the owners of all Townhome Units in the Properties and additions thereto, and their successors, heirs, and assigns, whether such easements are mentioned or described in any deed of conveyance.

## ARTICLE V

### Community Association

5.1 Purpose of the Community Association. The Community Association has been, or will be, incorporated as a corporation not organized for profit under the laws of Kansas. The Community Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Community, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any), and other matters as provided in or contemplated by this Declaration, the Community Association Articles, the Community Association Bylaws, the Community Association Rules, or Design Standards. The Community Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the benefit of the Community in accordance with the provisions of the Community Declaration, Community Association Articles, and Community Association Bylaws.

5.2 Membership in Community Association.

- (a) Subject to the provisions of Section 5.17 of Article 5 hereof, each Owner shall be entitled to one Community Association Membership and one vote in the Community Association for each Townhome Unit owned so long as he or she is the Owner of such Townhome Unit or Units, and such Owner shall specify in writing to the Community Association the name of the individual who will hold the Community Association membership for each such Townhome Unit. In the absence of such written specification, assessments shall nevertheless be charged against the Townhome Unit and Owner thereof, but there shall be no right to vote the membership. The Community Association member must be an individual who is



either an Owner, or if the Owner is or includes a Person other than an individual, the Community Association Member may be an individual who is a partner if the Owner is or includes a partnership, or an officer of a corporation if the Owner is or includes a corporation, or a beneficiary of the trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, a partnership, a corporation, or a trust.

- (b) Subject to the provisions of Subsection 5.2(a) of Article 5, once a Community Association member has been specified by an Owner of a Townhome Unit, a new Community Association Member may only be specified for that Townhome Unit upon at least 15 days' prior notice to the President of the Community Association; provided, however, the foregoing shall not impair the provisions of Subsection 5.2(c) of Article 5.
- (c) A membership in the Community Association shall not be transferred, pledged, or alienated in any way, except as herein expressly provided. Subject to the provisions of Subsection 5.2(a) of Article 5, Community Association membership shall automatically be transferred to the new Owner upon the transfer of the Townhome Unit to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Townhome Unit.

5.3 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to his or her Community Association membership with respect to his or her Townhome Unit to a mortgagee as additional security, the vote of such mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Community Association. In the event that more than one such instrument has been filed, the Community Association shall recognize the rights of the first mortgagee to so file, regardless of the priority of the mortgages themselves.

5.4 Assignment of Developer's Voting Rights. If any lender to whom the Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this Declaration, succeeds to the interests of the Developer by virtue of said assignment, the absolute voting rights of the Developer as provided in Section 5.17 of Article 5 shall not be terminated thereby, and such lender shall hold the Developer's memberships and voting rights on the same terms as they were held by the Developer pursuant hereto.

5.5 Board of Directors of the Community Association.

- (a) The affairs of the Community Association shall be conducted by the Community Association Board as herein provided and in accordance with the Community Association Articles and Community Association Bylaws. Except for directors elected by the Developer as provided for in Section 5.17 of Article 5, each director



shall be a Community Association member or the spouse of a Community Association member. If a director shall cease to meet such qualifications during his or her term, he or she will thereupon cease to be a director and his or her place on the Community Association Board shall be deemed vacant.

- (b) Except for directors elected by the Developer as provided for in Section 5.17 of Article 5, the members of the Community Association shall have the power and right to appoint and remove the members of the Community Association Board as provided in the Community Association Articles and Community Association Bylaws.
- (c) Any member of the Community Association Board may be removed from office, by action of the Community members, in accordance with the following procedures: Upon the presentation to the Community Association President of a petition duly executed by 34 percent or more of all of the Community Association members in favor of the removal from office of the member or members of the Community Association Board therein named, a referendum of the Community Association members shall be promptly held to determine whether such member or members of the Community Association Board should be removed from office. Upon the affirmative vote of two-thirds of all of the Community Association members then entitled to vote to remove such member or members of the Community Association Board from office, such member or members shall be deemed removed from office. Any vacancy on the Community Association Board created by the removal of a member of the Community Association Board as herein provided shall be filled by an election of all of the Community Association members in the manner provided in the Community Association Articles or Community Association Bylaws for the election of directors.

5.6 Duties and Powers of the President of the Community Association.

- (a) To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation Subsection 5.6(b) hereof, the President of the Community Association shall be empowered to exercise control over the affairs of the Community Association and to act on behalf, and bind, the Association in every instance wherein the Association is required or permitted to take any action. The action of the President shall at all times be subject to the review of the Board of the Community Association.
- (b) Notwithstanding anything in Subsection 5.6(a) of Article V to the contrary, the President shall not have the power to borrow any funds on behalf of the Community Association, make any expenditures on behalf of the Community Association which are, in the aggregate, more than 5% in excess of the total amount of the Community Association's budget, or increase the amount of or levy any assessment (except a



special assessment), without the prior approval of the Board of the Community Association.

- (c) The Community Association President may appoint such assistants as he or she deems necessary and appropriate. No compensation shall be paid to any assistant except as provided in the budget of the Community Association or as otherwise approved by the Board of the Community Association.
- (d) Any right or power herein given or delegated to the Community Association President which cannot be exercised by such President, whether by reason of law or otherwise, shall be deemed to be a right or power to be exercised by the Board of the Community Association.

5.7 President's Determination Binding. In the event of any dispute or disagreement between any Owners, Community Association members, or any other Persons subject to this Declaration, relating to the Community, or any question of interpretation, or application of the provisions, of this Declaration, the Community Association Articles or Bylaws, any Community Association Rules or other rules of the Community Association, or any Design Standards, the determination thereof by the Community Association President shall be final and binding on each and all of such Owners, Community Association members, or Persons. The Community Association President may, at his or her election, delegate the resolution of such dispute or disagreement, to the Community Association Board or a committee appointed by the Community Association President.

5.8 Approval of Members. Unless otherwise specifically provided in this Declaration or the Articles or Bylaws of the Community Association, any provision of the foregoing which requires the vote or written assent of the members of the Community Association shall be deemed satisfied by the following:

- (a) The vote in person, or by proxy, of the specified percentage of Community Association members entitled to vote at a meeting duly called and noticed pursuant to the provisions of the Community Association Articles or Bylaws, dealing with annual or special meetings of the members of the Community Association.
- (b) Written consents signed by the specified percentage of members then entitled to vote as provided in the Bylaws of the Community Association.

5.9 Additional Provisions in Articles and Bylaws. The Articles and Bylaws of the Community Association may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, and members not inconsistent with law or this Declaration.



- 5.10 Community Association Rules. In order to be able to address specific matters relating to the administration, operation, and development of, or other matters relating to, the Community, the Community Association Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Community Association Rules"). The Community Association Rules may include the establishment of a system of fines and penalties enforceable as special assessments or otherwise. The Community Association Rules shall not be inconsistent with the terms of this Declaration, the Master Declaration or the Residential District Rules. The Community Association Rules may not unreasonably or unlawfully discriminate among Owners and Community Association members. A copy of the Community Association Rules as they may from time to time be adopted, amended, or repealed, or a notice setting forth the adoption, amendment, or repeal of specific portions of the Community Association Rules shall be delivered to each Community Association member in the same manner established in this Declaration for the delivery of notices. Upon completion of the notice requirements, the Community Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Community Association members, and all other Persons having any interest in, or making any use of, the Community Association, whether or not actually received thereby. The Community Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Community Association to each Owner, Community Association member, or other Person reasonably entitled thereto, upon request. In the event of any conflict between any provision of the Community Association Rules and any provisions of this Declaration or the Community Association Articles or Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Articles or Bylaws to the extent of any such conflict.
- 5.11 Indemnification. To the fullest extent permitted by law, every director and every officer of the Community Association, and the members of the Design Review Committee, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal, or control over members of the Community Association Board or the Design Review Committee), and Grand Mere Realty, LLC, shall be indemnified by the Community Association, and every other person serving as an employee, or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board of the Community Association, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Community Association (or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of the Community Association Board or the Design Review Committee) whether or not he or she is a director, an officer, or a member of the Design Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to



any such indemnification, the Community Association Board shall determine, in good faith, that such officer, director, member of the Design Review Committee, or other Person or the Developer, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to Article 5 to cover any liability exposure created by virtue of the foregoing indemnification.

- 5.12 Non-Liability of Officials. To the fullest extent permitted by law, neither the Developer, Grand Mere Realty, the Community Association President, any directors or officers of the Community Association, any Design Review Committee member, nor any other members of committees of the Community Association shall be liable to any Community Association Member or any Owner, Occupant, or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which the Developer, the President, any director, any officer, or any member such committees reasonably believed to be within the scope of his or her duties.
- 5.13 Easements. The Community Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Community Association such permits, licenses, easements, and rights of way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways, or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of all or any part of the Community or the "Residential District" (as such term is defined in the Master Declaration), or the preservation of the health, safety, convenience, and welfare of, the Owners.
- 5.14 Accounting. The Community Association, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, and shall have available for the inspection of all Owners at reasonable times during regular business hours, books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.
- 5.15 Records. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Community Association Member the books, records, and financial statements of the Community Association together with current copies, as amended from time to time, of this Declaration and the Community Association Articles, Bylaws, and Rules, and Design Standards. The Developer shall be under no obligation to make its own books and records available for inspection by the Community Association, or any Owner, Community Association member or other Person.



- 5.16 Managing Agent. Any powers, duties, and rights of the Community Association created pursuant hereto, or of the Community Association President or Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon 60 days' prior written notice.
- 5.17 Developer's Control of the Community Association. Notwithstanding anything in this Article 5 or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Community Association and the Design Review Committee, including appointment and removal of the President and all other officers of the Community Association, all directors of the Community Association Board, and all members of the Design Review Committee, until the date Developer shall own less than two (2) acres in the Residential District, as such term is defined in the Master Declaration referred to above. Until such time, only the Developer will be entitled to cast any votes with respect to the election and removal of Community Association officers or directors and members of the Design Review Committee, or any other matter requiring the vote or approval of Community 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.

## ARTICLE VI

### Powers and Duties of the Association

- 6.1 Duties. The Association shall have the following duties:
- (a) To maintain, repair, and replace the exterior of all Buildings and appurtenances thereto, including but not limited to all structural parts, party walls, roofs, guttering, eaves, and any other items not in the interior of a Townhome Unit; provided, however, that routine sweeping and leaf removal from driveways, sidewalks, decks, and patios shall be the initial responsibility of the Owner of the Townhome Unit to which such appurtenances are a part. If the Owner does not undertake these routine duties, the Association shall have the right to undertake such duties.
  - (b) To improve, maintain, and repair the Common Area and Facilities and to replace items therein when necessary, all of which includes but is not limited to, grass areas, flower gardens, shrubs, trees, plants, walkways, retaining walls, drainage, and lighting facilities, and to remove snow and ice from the Common Areas.



- (c) To maintain the lawns and landscaping on the properties, including the regular mowing, irrigating, fertilizing, maintenance, and trimming of lawns, and the removal of all debris and unsightly objects from such lawns.
- (d) To accomplish trash removal on a weekly or more frequent basis from the Townhome Units.
- (e) To spray for insects and vermin.
- (f) To remove snow from any front porch, driveway, or sidewalk located upon the properties, including driveways and sidewalks shown on the Plat as Limited Common Areas.
- (g) To pay all real estate taxes, including special assessments, levied against the Common Area.
- (h) To obtain and provide public liability, casualty, and other such insurance deemed necessary by the Association for the Common Area and Townhome Units, as more specifically set forth in Section 9.1 hereof.
- (i) To employ a responsible contractor to restore, reconstruct, replace, or repair within a reasonable time any Townhome Unit or Building which has been completely or partially damaged or destroyed by fire or any other hazard or occurrence, and to pay for any such work from the insurance proceeds and to collect any excess of the cost of any such work over the said insurance proceeds as set forth in Section 9.3 hereof.
- (j) To make and enforce rules and regulations establishing the times and conditions for the parking of vehicles on the streets within the properties.
- (k) To do and perform such other things as may from time to time be necessary to maintain the quality and appearance of the Common Areas and the Buildings.

6.2 Powers. The Association shall have the following powers:

- (a) To fix, levy, and collect special assessments and general assessments as Common Expenses or otherwise, against each Townhome Unit as hereinafter set forth in Article 8, for the purpose of performing its duty to maintain, repair, and replace the exterior of all Buildings pursuant to Section 6.1(a) hereof.
- (b) To fix, levy, and collect assessments made by the Master Association.
- (c) To fix, levy, and collect general assessments as Common Expenses or otherwise, against each Townhome Unit, as hereinafter set forth in Article 8, for the purpose of



performing its duty to maintain and repair the Common Areas and other parts of the Properties, and to replace items therein when necessary pursuant to Sections 6.1(a), (b), and (c) hereof.

- (d) To collect and pay as Common Expenses real estate taxes, including special assessments, levied against the Common Areas.
- (e) To fix, levy, and collect special assessments and general assessments as Common Expenses against each Townhome Unit, as hereinafter set forth in Article 8, for the purpose of obtaining and paying the premiums for such public liability, casualty, and other insurance for the Common Area and Townhome Units required by Article 9 hereof.
- (f) To restore, reconstruct, replace, or repair any Townhome Unit which has been damaged, as set forth in Section 9.3, to collect and receive the proceeds from any insurance company covering loss or damage by fire or other hazard or occurrence to any Townhome Unit, and to pay out of such proceeds the cost of any such restoration, reconstruction, replacement, or repair hereinabove mentioned, and to collect any excess of the cost of any such work over such insurance proceeds from the Owner or Owners of the respective Townhome Unit incurring such excesses, all as hereinafter provided in Section 9.1.
- (g) To adopt and publish such rules and regulations that it from time to time considers to be necessary for the enjoyment by the Townhome Unit Owners of the Common Areas and for the preservation of the quality and appearance of the Properties, and to amend such rules and regulations.

## ARTICLE VII

### Maintenance Obligations of Townhome Unit Owners

- 7.1 Maintenance of Interiors of Townhome Units. Each Townhome Unit Owner shall maintain in good condition and repair the interior of his or her Townhome Unit, together with such other portions of his or her Townhome Unit for which the Association shall not have the duty to maintain, repair, and replace.
- 7.2 Routine Maintenance. Each Townhome Unit Owner shall be responsible for routine sweeping from driveways, sidewalks, decks, and patios which are appurtenant to his or her Townhome Unit. In the absence of the Townhome Unit Owner's undertaking this responsibility, the Association shall perform such routine maintenance and charge the Townhome Unit Owner for such maintenance.



- 7.3 Exterior Painting. No Townhome Unit Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of his or her Townhome Unit or do any work which would jeopardize the soundness, attractiveness, or safety of the Properties, reduce the value thereof, or impair any easement or hereditament without in every such case first obtaining the written consent of the Design Review Committee.
- 7.4 Cooperation with Association. A Townhome Unit Owner shall promptly report to the Association any defect or need for repairs for which the Association is responsible. Each Townhome Unit Owner shall have the further duty to cooperate with the Association in order that his or her Lot will be well-maintained and to exercise reasonable efforts to prevent the Common Areas from accumulating debris, litter, or other unsightly objects.

## ARTICLE VIII

### Covenant for Assessments

- 8.1 General Assessments for Common Expenses. The Developer for each Townhome Unit within the Property, hereby covenants and agrees, and each Owner of any Townhome Unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association or to the Master Association assessments or charges to be fixed, established, levied, and collected from time to time as hereinafter provided, which assessments shall include, but not be limited to, real estate taxes levied against the Common Area, liability and casualty insurance, and expenses necessary for the maintenance, repair, and replacement of the Common Area and Facilities.
- 8.2 Special Assessments. The cost of maintaining, repairing, and replacing the exterior portions of a Townhome Unit, except costs covered by insurance, shall be assessed as special assessments following the completion of such maintenance, repair, or replacement. Such costs shall be assessed against the owner of the Townhome Unit where the maintenance, repair, or replacement was performed, and the full amount of such assessment shall be paid within ten (10) days following billing by the Association. An exception to the Townhome Owner's obligation to pay under this subsection shall occur if the maintenance, repair, or replacement was occasioned due to the fault of the Association, in which event the costs shall be assessed against the Association, and shall be considered a Common Expense.
- 8.3 Determination and Payment of Assessments. The Board of Directors of the Association shall adopt a budget for each calendar year on or before the second Monday in December of the year preceding the year for which the budget is made, which budget shall contain estimates of the costs of performing the obligations of the Association, taking into consideration overages and/or shortages from previous years, making provisions therefor, and including but not limited to, assessments for Common Expenses, alterations and improvements, reconstruction and repairs, reserves, including reserves for capital improvements, and emergencies. Concurrently therewith, the Board of Directors shall prepare the proposed



assessment against each Townhome Unit Owner, on the basis that the estimated costs, other than those for which special assessments may be made, shall be borne equally by the Townhome Unit Owners. The assessment against each Townhome Unit Owner shall be due and payable quarterly in such amounts as may be determined by the Board of Directors on the first day of January, April, July, and October during the year for which the assessment is made. A copy of each annual budget, together with the proposed assessment to be made against each Townhome Unit Owner, shall be delivered to each such Owner on or before the first day of the calendar year for which the budget and assessments are prepared. If an annual budget or proposed assessment is not made as required, a payment in the amount required by the last prior assessment shall be due from each Townhome Unit Owner upon each assessment payment date until changed by a new assessment made by the Board of Directors. Within sixty (60) days following each calendar year the Board of Directors shall send to each Townhome Unit Owner an annual report of assets and liabilities of the Association issued as of the last day of such calendar year. Copies of the budget, the assessments, and the annual report shall be furnished to any Townhome Unit Owner upon request.

- 8.4 Other Assessments. Other assessments shall be made by the Board of Directors in accordance with the provisions of the Declaration, the Bylaws, and as otherwise required by the lawful resolution of the Board of Directors.
- 8.5 Master Association Assessment. Regular assessments shall be made by the Master Association and shall be paid in full at the beginning of the calendar year. Special or emergency Master Association assessments may be made pursuant to the Master Declaration.
- 8.6 Assessments for Emergencies. Assessments for Common Expenses resulting from emergencies which cannot be paid from an appropriate expense account may be made by the Board of Directors from time to time.
- 8.7 Assessment Roll. The assessments against all Townhome Unit Owners shall be set forth upon a roll of the Townhomes which shall be available in the office of the Association for inspection at all reasonable times by Townhome Unit Owners or their duly authorized representatives. Such roll shall indicate for each Townhome Unit the name and address of the owner or owners, the assessments, and the amounts of all assessments paid and unpaid.
- 8.8 Liability for Assessments. The Owner of a Townhome Unit and his or her grantee shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance of the unit. Such liability may not be avoided by a waiver of the use and enjoyment of the Common Area or by abandonment of the Townhome Unit for which the assessments are made.
- 8.9 Date of Commencement of Assessments. The assessments provided for by this Article 8 shall commence as to each Townhome Unit as of the date each Townhome Unit is available for habitation.



8.10 Default in Payment of Assessments.

- (a) Any assessment or charge not paid within five (5) days following the date it is due shall be delinquent, and the delinquent Townhome Unit Owner shall be considered default in his or her obligation to make such payment.
- (b) In the event of default by a Townhome Unit Owner in paying to the Association or the Master Association any assessment, such Townhome Unit Owner shall be obligated to pay interest at a rate equal to the maximum rate then allowable in Kansas on notes and contracts secured by a first real estate mortgage, or fifteen percent (15%), whichever shall be the lesser, on such assessment from the due date thereof, together with all expenses, including attorney fees (if and to the extent allowed by law) incurred by the Board of Directors in attempting to collect such unpaid assessment. The Board of Directors shall have the right to recover such unpaid assessment, together with interest thereon, and such expenses of the proceeding in any action to recover the same brought against such Townhome Unit Owner, and/or by foreclosure of the lien as provided in Section 8.11.
- (c) A Townhome Unit Owner default in the payment of any assessment for a period of thirty (30) days shall not be entitled to vote at any meeting of the Townhome Unit Owners so long as such default continues.
- (d) Except as set forth in Section 10.10 of this Declaration, no Townhome Unit Owner shall be liable for the payment of any part of an assessment against his or her Townhome Unit which is assessed subsequent to a sale, transfer, or other bona fide conveyances by him or her of such townhome. A Townhome Unit Owner shall, however, be liable for any special assessment for insurance premiums paid, or for maintenance, repair, or replacement costs incurred with respect to his or her Townhome Unit, prior to the sale, transfer, or conveyance of his or her Townhome Unit, even though the special assessment for such premiums or costs shall not have been made on or before such transfer, sale, or conveyance.

8.11 Lien for Assessments.

- (a) All sums assessed by the Association or by the Master Association but unpaid for the share of Common Expenses chargeable to any Townhome Unit shall constitute a lien on such Townhome Unit and the Lot on which it is situated, and shall be prior to all other liens except only (i) tax liens on the Townhome Unit and Lot in favor of any political subdivision, municipal corporation, special benefit district, or other state or federal taxes which are by law a lien on the interest on such Townhome Unit Owner prior to previously recorded encumbrances thereon, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the Board of Directors of the Association in like manner as a mortgage on real property. In any such foreclosure, the Association shall have power to bid in the Townhome Unit and Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.



Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same.

- (b) Where the mortgagee of a first mortgage of record or other purchaser of a Townhome Unit obtains title to a Townhome Unit as a result of a foreclosure of the first mortgage or by a deed executed in lieu of foreclosure, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the Common Expenses of assessments chargeable to such Townhome Unit which become due prior to the acquisition of title to such Townhome Unit by the acquirer and such acquirer of title shall take the property free of any claims for unpaid assessments or charges against the mortgaged Townhome Unit which accrued prior to the time of acquisition of such title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all Townhome Unit Owners including such acquirer, his or her successors, and assigns.
  - (c) In a voluntary conveyance the grantee of a Townhome Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for grantor's share of the Common Expenses up to the time of the grant of conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Provided, however, that any such grantee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be subject to a lien for any unpaid assessments against the grantor in excess of the amount therein set forth.
- 8.12 Rental Pending Foreclosure. In any foreclosure of a lien for assessments the Owner of the Townhome Unit subject to the lien shall be required to pay a reasonable rental for the Townhome Unit, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same.
- 8.13 Statement of Common Charges. Upon written request therefor, the Board of Directors shall provide any Townhome Unit Owner with a written statement of all unpaid Common Expenses and special assessments due from such Townhome Unit Owner. Such statement shall be furnished within ten (10) days after receipt of said request.
- 8.14 Accounts. All sums collected by the Association from assessments may be commingled in a single fund, but they shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. Such accounts shall be as determined by the Board of Directors, but shall include the following:
- (a) *Common Expense Account*, to which shall be credited collections of assessments for all Common Expenses;



- (b) *Alteration and Improvement Account*, to which shall be credited all sums collected for alteration and improvement assessments;
- (c) *Reconstruction and Repair Account*, to which shall be credited all sums collected for reconstruction and repair assessments;
- (d) *Emergency Account*, to which shall be credited all sums collected for emergencies;
- (e) *Reserve Account*, to which shall be credited all funds required by the Board of Directors for working capital of the Association, general operating reserves, reserves for replacement and maintenance, and funds required to make up deficits in the expenses for any prior year.

8.15 Developer's Payments during Sale and Development Period. Notwithstanding anything in this Declaration to the contrary, following the commencement of assessments, Developer, even though a member of the Association, shall not be responsible for the payment of the regular Association assessment. Developer shall not be responsible for the payment of any assessments for deferred maintenance, reserves for replacements, or for capital improvements during the development and sale period except for any Townhome Unit which it actually uses for purposes other than display for sale.

## ARTICLE IX

### Insurance and Casualty Losses

#### 9.1 Insurance.

- (a) *Individual Units.* Each Townhome Unit Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the unit, excluding land, foundation, and excavations. Such insurance shall provide for payment of the losses thereunder by the insured to the Association or its nominees, insurance trustee for the benefit of each owner, the holder of each first mortgage of record thereon, and the Association as their interests appear. Proceeds received by the insurance trustee shall be used to repair, reconstruct, or rebuild the Townhome Units damaged or destroyed by fire or other casualty unless all Townhome Unit Owners and their first mortgagees agree in writing not to repair, reconstruct, or rebuild. The Board of Directors of the Association at its option may obtain and maintain such insurance under one blanket fire and extended coverage policy providing insurance for all owners and first mortgagees of Townhome Units as their interests may appear pursuant to this Declaration. In such event, the insurance premium shall be Common Expenses to be paid as set forth herein. In such event each Townhome Unit Owner shall be furnished a memorandum of insurance coverage approved by the Commissioner of Insurance setting forth the essential



coverages of the blanket policy. Provision for such blanket insurance shall be without prejudice to the right of each Townhome Unit Owner to insure his or her own Townhome Unit under a separate policy if benefits thereunder are payable to the Association or its nominee, as insurance trustee for the benefit of the Association and all owners and their first mortgagees as their interest may appear.

- (b) *Common Area Fire and Extended Coverage.* The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all insurable improvements on the Common Area against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief, but the Association shall not be obligated to so insure all Common Areas if, by written agreement with any separate association established for any parcel in the Properties subject to this Declaration, such association assumes the insurance responsibility for the Properties held by such other association. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard.
- (c) *Common Area Liability.* The Board shall also obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a Three Million Dollar (\$3,000,000.00) single person limit as respects bodily injury per occurrence, and a Fifty Thousand Dollar (\$50,000.00) minimum property damage limit. Premiums for all insurance on the Common Area shall be Common Expenses of the Association; premiums for insurance provided to other associations or parcels, if any, shall be charged to those associations. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Cost of insurance coverage obtained for the Common Area shall be included in the general assessment, as defined in Article 8 above.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefitted parties. Such insurance shall be governed by the provisions hereinafter set forth:

- (1) All policies on the Common Area shall be for the benefit of the Association, the agents of the Association, and the Townhome Unit Owners, and their mortgagees as their interests may appear.
- (2) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with



insurance purchased by individual Townhome Unit Owners, occupants, or their mortgagees.

- (d) *Directors' and Officers' Liability Insurance.* The Association may elect to procure directors' and officers' liability insurance.

9.2 Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

To the extent that any losses thereunder are to areas covered by a common roof or party wall, the proceeds received therefrom shall be used to reconstruct said common roof or party wall, and in the event the proceeds are not so used, the Association's Board of Directors can proceed to repair said areas and assess the costs of repairs against individual units as special unit assessments as more fully set out in Article 8 above.

9.3 Repair or Reconstruction after Fire or Other Casualty.

- (a) If in the event of damage to or destruction of the Properties or any part thereof as a result of fire or other casualty the proceeds of any policy or policies of insurance insuring against such loss or damage and payable by reason thereof, shall be substantially sufficient in the opinion of the Board of Directors to pay the cost of repair or restoration, estimated as hereinafter provided, then the Board of Directors shall arrange for the prompt repair and restoration of the Buildings (including any damaged Townhome Units, but not including any equipment, fixtures, furnishings, or personal property of the Townhome Unit Owners as described in the following paragraph), and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any actual cost of such repair and restoration to the Common Areas and Facilities in excess of the insurance proceeds shall constitute a Common Expense and the Board of Directors may assess all the Townhome Unit Owners for such excess cost as part of the Common Expense.
- (b) Each Townhome Unit Owner shall be responsible for the reconstruction, repair, or replacement of all personal property located within the interior of his or her Townhome Unit or on his or her lot, to the extent not covered by the insurance carried by the Board of Directors and including, but not by limitation, the following: furniture, furnishings, and all appliances located therein irrespective of whether such appliances are "built-in" to the Townhome Unit.

Each Townhome Unit Owner shall also be responsible for the costs not otherwise covered by insurance carried by the Association of any reconstruction, repair, or replacement of any portion of the property necessitated by his or her negligence or misuse, or the negligence or misuse by his or her family, guests, tenants, agents, servants, employees, or contractors. In the event damage to all or any part of the interior of a Townhome Unit Owner's Townhome Unit is not covered by insurance



held by the Association for the benefit of such Townhome Unit Owner, then such Townhome Unit Owner shall begin reconstruction or repair of his or her Townhome Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve, or disapprove such reconstruction or repair during the course thereof.

- (c) In the event the property or the improvements thereon so damaged or destroyed are not insured against the peril causing the loss or damage, or the insurance proceeds shall not be substantially sufficient in the opinion of the Board of Directors to pay the cost of repair or restoration, estimated as hereinafter provided, the president or secretary of the Association shall within sixty (60) days following such damage or destruction, call a special meeting of all Townhome Unit Owners. If at such meeting the owners, including contract sellers and first mortgagees, of all Townhome Units shall vote, by written ballot, not to rebuild, reconstruct, or repair the damaged or destroyed portions of the properties, such portions of the property shall not be rebuilt, and the Board of Directors, as insurance trustee, shall pay the insurance proceeds to the owners of Townhome Units, including contract sellers and first mortgagees, whose Townhome Units would otherwise have been rebuilt, reconstructed, or repaired, as their interest in such insurance proceeds may appear.
- (d) Notwithstanding anything in this Article 9 to the contrary, if all Townhome Unit Owners, including contract sellers and first mortgagees, agree in writing not to repair, reconstruct, or rebuild any damaged or destroyed portions of the properties prior to the commencement of any rebuilding, reconstruction, or repair, then the insurance proceeds shall be paid by the Board of Directors of the Association, as insurance trustee, to the owners, including contract sellers and first mortgagees, of the Townhome Units damaged or destroyed, as their interests may appear; provided, however, that if any portion of such insurance proceeds are payable as the result of damage or destruction to the Common Area and Facilities, such proceeds shall be retained by the Association for the benefit of the Townhome Unit Owners.
- (e) As soon as possible after the occurrence of a casualty which causes damage to any part of the properties (hereinafter referred to as the "Casualty"), the Board of Directors shall obtain reliable and detailed cost estimates of the following:
  - (1) The cost of restoring all damage caused by the Casualty to the Common Areas and Facilities (hereinafter referred to as the "Common Area and Facilities Costs"); and
  - (2) The cost of restoring that part of the damage caused by the Casualty to each Townhome Unit which is or would be covered by insurance held by the Association without regard to the policy limits of such insurance (hereinafter referred to as the "Townhome Unit Costs").



- (f) If repair or restoration is to be made pursuant to this Section 9.3, all insurance proceeds available to the Association with respect to the Casualty shall first be applied to the payment of the actual Common Areas and Facilities Costs and the balance thereof, if any, shall thereafter be applied to the payment of the actual Townhome Unit Costs. However, if such insurance proceeds are not sufficient to cover the actual costs, then an assessment shall be made against the Townhome Unit Owners by the Association in the following manner:
- (1) All Townhome Unit Owners shall be assessed equally for the payment of the estimated Common Areas and Facilities Costs not otherwise paid for by insurance held by the Association.
  - (2) Each owner of a damaged Townhome Unit shall be assessed in an amount equal to his or her actual Townhome Unit Costs less the proceeds of insurance paid or payable with respect to his or her Townhome Unit. The amount of such assessment shall be paid by the Townhome Unit Owner to the Association at the time a contract is entered into by the Association for such repair or reconstruction. If a Townhome Unit Owner shall fail to pay his or her share of the costs at the time requested, no repair or reconstruction work shall be performed in or to that Townhome Unit except such work as shall be deemed by the Board of Directors to be absolutely necessary for the safety, protection, and appearance of the other Townhome Unit Owners until such share of the cost shall have been paid.
- (g) Any reconstruction or repair shall be substantially in accordance with the plans and specifications for the original building, or if not, then according to plans and specifications approved by the Board of Directors of the Association and by the Design Review Committee.

## ARTICLE X

### Association

The Association shall fulfill its functions pursuant to the following provisions:

- 10.1 Purpose of the Community Association. The Community Association has been, or will be, incorporated as a corporation not organized for profit under the laws of the State of Kansas. The Community Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Community, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any), and other matters as provided in or contemplated by this Declaration, the Community Association Articles, the Community Association Bylaws, the Community Association rules, or Design Standards. The



Community Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the benefit of the Community in accordance with the provisions of the Community Declaration, Community Association Articles, and Community Association Bylaws.

- 10.2 Limitations upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the properties, the Association shall not be liable to Townhome Unit Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association.
- 10.3 Restraint upon Assignment of Shares in Assets. The share of a Townhome Unit Owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his or her Townhome Unit.
- 10.4 Approval or Disapproval of Matters. Whenever the decision of a Townhome Unit Owner is required upon any matter, whether the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.
- 10.5 Voting Rights. Members of the Association shall be entitled to voting rights as set forth in Article 5 of this Declaration.
- 10.6 Books of Receipts and Expenditures. The Board of Directors of the Association shall keep detailed accurate records, in chronological order, of receipts and expenditures affecting the Common Areas and Facilities and the Townhome Units and such record shall specify and itemize the maintenance and repair expenses of the Common Areas and Facilities and of the Townhome Units and any other expenses incurred. Such records and any vouchers authorizing payments shall be available for examination by Townhome Unit Owners at convenient hours of weekdays.
- 10.7 Managing Agent or Manager. The Board of Directors may employ for the Association a management company or a manager, at such compensation as shall be established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. No management contract or agreement shall, however, be for a period longer than three (3) years from the date of execution, and all such management contracts or agreements shall contain a provision allowing termination thereof by the Board of Directors at any time, with or without cause, on sixty (60) days' prior written notice to the manager or management company.
- 10.8 Notification to First Mortgagees. The Association, within thirty (30) days following default by a Townhome Unit Owner, shall notify the holder of the first mortgage of a Townhome Unit whose name and address have theretofore been furnished to the Association, of any



uncured default by the mortgagor in the performance of the mortgagor's obligation under this Declaration, the Bylaws, and the rules and regulations of the Association. In the event a Townhome Unit shall have been sold on contract and an affidavit delivered to the Association as required by Section 10.10 of this Declaration, the Association shall, within thirty (30) days following default by a contract purchaser, notify the contract seller of any uncured default by the contract purchaser in the performance of the contract purchaser's obligation under this Declaration, the Bylaws, and the rules and regulations of the Association.

- 10.9 Legal Action. The Association shall have the right and authority, but not the obligation, for and on behalf of the Townhome Unit Owners to initiate or defend any legal action or claim arising out of their ownership of Townhome Units, and to negotiate any settlement thereof as a special assessment that may be levied against any Townhome Unit or against the Common Area.
- 10.10 Borrow Money. The Board of Directors shall have the right to borrow money to meet requirements from time to time for working capital, Common Expenses, and emergencies; provided, however, that no single loan shall exceed \$10,000.00, loans at any time outstanding shall not exceed \$100,000.00 in the aggregate, and no loan shall be entered into having a maturity date in excess of five (5) years. Any loan or loans in excess of such limits or for a longer maturity shall be made only with the affirmative vote in person or by proxy of at least 80 percent of the Townhome Unit Owners.
- 10.11 Change of Membership in Association. Change of membership in the Association shall be established by recording a deed or other instrument in the Office of the Register of Deeds of Riley County, Kansas, establishing a record title to a Townhome Unit and the delivery to the Association of a copy of such instrument. The Owner designated by such instrument shall thereby become a member of the Association and of the Master Association, and the membership of the prior Owner shall thereby be terminated. In the event a Townhome Unit shall be sold pursuant to a contract by the terms of which the record title to the Townhome Unit shall not pass until full payment of the purchase price has been made by the contract purchaser, an Affidavit of Equitable Interest setting forth the name of the contract purchaser and a description of the Townhome Unit sold shall be made by both the contract seller and the contract purchaser, and recorded in the Office of the Register of Deeds of Riley County, Kansas. A copy of such Affidavit of Equitable Interest shall be provided to the Association, together with the address of the contract seller to which notices required by this Declaration or the Bylaws shall be mailed. The contract purchaser as named in such Affidavit of Equitable Interest shall thereupon be considered the owner of the Townhome Unit described therein for all purposes of this Declaration, the Bylaws, and rules and regulations of the Association, and, by entering into such purchase contract, agrees to assume all obligations imposed upon the Owner of such Townhome Unit as are imposed by the Kansas Townhouse Ownership Act, this Declaration, the Bylaws, the rules and regulations of the Association, and the Master Association Declaration. In no event, however, shall the contract seller be



released from any obligations as the Owner of the Townhome Unit described in such Affidavit until a deed conveying fee simple title to the Townhome Unit to the contract purchaser shall have been recorded in the Office of the Register of Deeds of Riley County, Kansas, and a copy of such deed delivered to the Association. In lieu of recording a deed with the Register of Deeds, a final order entered by a court of competent jurisdiction transferring ownership of a Townhome Unit shall transfer such title, provided a certified copy of such final order is delivered to the Association.

- 10.12 Hiring of Professionals. The Association shall have the authority to hire professionals, such as CPAs, architects, and attorneys to assist the Association in its duties.

## ARTICLE XI

### Use of the Properties

In addition to the Use and Occupancy Restrictions established in the Master Declaration, the restrictions hereinafter set forth in this Article 11 are hereby established. The use of the Properties shall be in accordance with the following provisions:

- 11.1 Common Areas and Facilities. The Common Areas and Facilities shall be used only for the purposes for which they are reasonably suited and only for such purposes which are incidental to the use and occupancy of the Townhome Units.
- 11.2 Townhome Units. The Townhome Units are to be used for providing living accommodations for the Townhome Unit Owners, and for related uses and enjoyment. Notwithstanding anything herein to the contrary, Developer may retain ownership of one or more Townhome Units for use as models and sales and/or promotion offices in connection with the sale or rental of Townhome Units. No nuisances shall be allowed upon the Properties, nor any use or practice which is the source of annoyance to other Owners or which interferes with the peaceful possession and proper use of a Lot or Townhome Unit by its Owner.
- 11.3 Lawful Use. No offensive or unlawful use shall be made of the Lots or Townhomes, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the properties shall be observed. The obligation of complying with requirements of governmental bodies as to the maintenance, modification, or repair of any part of the properties, shall be imposed on the same person who has the obligation to maintain and repair such property by the terms of this Declaration.
- 11.4 Leasing. No Townhome Unit shall be rented for transient purposes, or without the prior written approval of the Board of Directors, for any period of less than three months or to more than two unrelated Persons or more than one family. No Townhome Unit Owner shall be entitled to rent his or her Townhome Unit if he or she is delinquent in the payment of any assessment required by this Declaration. Any lease or rental agreement pertaining to a



Townhome Unit shall be approved by the Board of Directors prior to any lessee's or tenant's taking occupancy thereunder. The Board of Directors may require standardized leases or rental agreements with respect to all Townhome Units; provided, however, that the amount of rent shall not be subject to approval or standardization by the Board of Directors. All leases or rental agreements shall contain a provision to the effect that the rights of the tenant to use and occupy the Townhome Unit shall be subject and subordinate in all respects to the provisions of this Declaration, the Bylaws, the rules and regulations of the Association, and any restrictive covenants that may be placed upon the Property. The provisions of this Section 11.4 shall not apply to any institutional mortgagee of any Townhome Unit who obtains possession of a Townhome Unit as a result of any remedies provided by law or in such mortgage, as a result of a foreclosure sale or other judicial sale, or as a result of any proceedings, arrangements, or deed in lieu of foreclosure.

- 11.5 Occupancy Restrictions. The number of persons who shall be permitted to occupy a Townhome Unit may be restricted by the vote of eighty percent (80%) of the Townhome Unit Owners at an annual or special meeting of such Owners.
- 11.6 Residential Use. Each Townhome Unit may be used only for residential purposes and no other, except that home occupations, as defined in this Article, shall be permitted. The following are intended to be examples of home occupations that are permitted:
- (a) Dressmakers, seamstresses, tailors.
  - (b) Music teachers, dance or art instructors, provided that instructions shall be limited to one pupil at a time, except for occasional groups.
  - (c) Artists, sculptors, and authors or composers.
  - (d) Ministers, rabbis, priests.
  - (e) Offices.
  - (f) Home crafts, such as model making, rug weaving, cabinet making, etc.

No home occupation shall be permitted unless it complies with the following restrictions:

- (a) No stock in trade shall be displayed, rented, sold, or stored on the premises, except for articles produced by persons residing on the premises, and except for items customarily stored or sold through a home occupation.
- (b) No alteration of the principal residential building shall be made which changes the character thereof as a dwelling.



- (c) No more than 25% of the dwelling unit shall be devoted to a home occupation. In addition, the total area of the premises devoted to the home occupation shall not exceed 50% of the living area of the dwelling unit.
- (d) There shall be no outdoor storage of equipment or materials used in the home occupation.
- (e) No person shall be employed by the home occupation, unless they reside in the dwelling unit.
- (f) The home occupation shall be conducted entirely within the principal residential building or in a permitted structure accessory thereto.
- (g) No sign shall be permitted.
- (h) There shall be no noise, smoke, dust, odor, or vibrations emanating from the property which unreasonably either annoys, disturbs, injures, or endangers the comfort, repose, health, peace, or safety of persons off of said Property.

In the event of a question regarding whether a proposed or existing home occupation complies with this Article, the decision of the Design Review Committee shall control. No business or commercial building may be erected on any Lot and no business or commercial enterprise, or other non-residential use, may be conducted on any part thereof. No temporary buildings, structures, or trailers may be erected, placed, or maintained on any Lot, except as expressly permitted by, and in compliance with, the applicable Design Standards. Nothing herein contained shall be deemed to limit the Developer's rights as set forth in this Article 11.

- 11.7 Signs. No permanent sign of any kind shall be displayed to the public view, or from any Lot, or any Common Areas, without approval of the Master Association, the Community Association, or the responsible Design Review Committee, except for the following temporary signs ("Permitted Signs"): (a) such signs as may be used by Developer in connection with the development and sale of Townhome Units in the Residential District; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and regulation of Common Areas; (d) such signs advertising the Townhome Unit as being for sale, except that: (i) the sign must be located only on the Lot to be sold; (ii) no real estate signs shall be placed in any Common Areas; and (iii) only one real estate for sale sign shall be placed on each Lot; (e) signs promoting political candidates, but only 30 days before and 5 days after the day of election, and only located upon the Lot of the Owner. Permitted Signs shall not exceed five square feet in total area or be more than three feet in height. Nothing contained herein shall be deemed to limit the Developer's rights as set forth in Article 11. The Developer or the Community Association shall have the right to remove any sign that violates these sign



conditions and to remove signs erected on the right of way, Common Areas, or on private property.

- 11.8 Animals. No animals, including horses or other domestic farm animals, fowl, or poisonous reptiles of any kind, may be kept, bred, or maintained on any Lot, except a reasonable number of commonly accepted household pets in accordance with the Community Association Rules. No animals shall be kept, bred, or raised within the Community for commercial purposes. In no event shall any domestic pet be allowed to run free away from its Owner's Lot or so as to create a nuisance.
- 11.9 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his or her Lot or Townhome which will obstruct or interfere with the rights of other Owners or occupants of Townhomes, or annoy them by unreasonable noises, or otherwise, nor will he or she commit, or permit any nuisance, or commit, or suffer any illegal act to be committed therein. Each Owner shall comply with the Community Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.
- 11.10 Boats and Motor Vehicles. No boats, trailers, buses, motor homes, campers, or other recreational vehicles shall be parked or stored in or upon the Lot except within an enclosed garage. No vehicle shall be repaired (excepting minor repairs) or rebuilt on any Lot. The Community Association may remove, or cause to be removed, any unauthorized vehicle or other item prohibited hereby at the expense of the owner thereof in any manner consistent with law.
- 11.11 Lights. No spotlights, flood lights, or other lighting, shall be placed or utilized upon any Lot or Townhome Unit in a manner which unreasonably interferes with the enjoyment of adjoining Townhome Units. All exterior lighting shall have a concealed energy source and a white color within the range of 2700° to 4500° K. Golden, yellow, blue, or reddish colors are not permitted. No exterior lighting shall be installed or maintained on any Lot or Townhome Unit if the Design Review Committee shall object thereto.
- 11.12 Antennas. Other than one 18" satellite dish per unit, no external radio, television, or other antennas of any kind or nature (including, but not limited to "satellite dishes") or other device for the reception or transmission of radio, microwave, or other similar signals, shall be placed or maintained upon any Lot or Townhome Unit without the prior approval of the Design Review Committee.
- 11.13 Garbage. No garbage or trash shall be kept, maintained, or contained on any Lot so as to be visible from another Lot or Townhome Unit. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage, or unsightly objects shall be allowed to be placed, accumulated, or suffered to remain anywhere on a Lot.



Trash shall be placed in such designated locations and containers as may be established from time to time by the Community Association or by the Design Standards.

- 11.14 Safe Condition. Without limiting any other provision of this Article 11, each Owner shall maintain and keep his or her Lot and Townhome Unit at all times in a safe, sound, and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Townhome Units. Any damage or destruction by fire or other casualty to a Townhome Unit shall be repaired and restored by the Owner thereof with due diligence, to the extent that such damage is not covered by insurance.
- 11.15 Basketball Goals. No basketball goals shall be attached to any Townhome Unit. All basketball goals shall be free standing and located behind the front building setback line shown on the applicable Plat. All such goals and devices are otherwise subject to the approval of the Design Review Committee.
- 11.16 Clothes Drying Area. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the Townhome Units to be constructed on each Lot.
- 11.17 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit, or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on the Plat, or other binding document, as a "drainage easement," or which has been intentionally contoured to facilitate drainage, except that, with the prior consent of the City and the Design Review Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.
- 11.18 Outbuildings Prohibited. No building or other detached structure may be erected on any Lot without the consent of the Design Review Committee.
- 11.19 Above-Ground Swimming Pools. No above-ground swimming pools or exterior hot tubs shall be allowed on any Lot.
- 11.20 Storage Tanks. No exterior storage tank for fuel or anything else shall be allowed on any Lot.
- 11.21 Garage Doors. Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item from the garage.
- 11.22 Solar Panels. Solar panels shall not be erected without the prior written consent of the Design Review Committee, and in no event shall the same face any street or the Golf Course.



- 11.23 Fences. No fences shall be constructed or maintained on any Lot without first obtaining approval from the Design Review Committee.
- 11.24 Flagpoles. No flagpoles shall be erected on any Lot.
- 11.25 Lawn Ornamentation. No lawn ornaments of any kind are permitted in yards visible from any street or the Golf Course without approval of the Design Review Committee.
- 11.26 Subsequent Modifications. Even after the structure has been completed and occupied, the approval of the Design Review Committee is required prior to undertaking any changes or additional construction affecting the exterior of the home. This would include adding or changing decks, pools, gazebos, outside lighting, cabanas, driveways, walks, fences, retaining walls, basketball goals, etc. It would also include any grading changes that affect drainage.
- 11.27 Enforcement. The Community Association or its authorized agents may enter any Lot or Townhome on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot and Townhome. Such expenses, and such fines as may be imposed pursuant to this Declaration or the Community Association Rules shall be a special assessment secured by a lien upon such Lot enforceable in accordance with the provisions of Article 8 hereof. All remedies described in Article 19 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, occupant, or other Person of any provision of this Article 11.
- 11.28 Modification. The Community Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Community and the Lots by reasonable rules and regulations of general application within the Community adopted by the Community Association Board from time to time.

## ARTICLE XII

### Party Walls

- 12.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Building upon the Properties and placed on the dividing line between two Townhome Units shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 12.2 Weatherproofing. A Townhome Unit Owner who by his or her negligent or willful act causes the party wall to be damaged or exposed to the elements shall be assessed for the entire cost of furnishing the necessary repair or protection against such elements.



- 12.3 Arbitration. In the event of any dispute pertaining to a party wall, or arising under the provisions of this Section 12, such dispute shall be submitted to and determined by a board of three arbitrators as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the arbitrators in such notice. Within ten (10) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure so to do, the arbitrator selected or appointed by a judge of the Riley County, Kansas, District Court, acting in a nonjudicial capacity, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and in the event the two arbitrators so appointed shall fail to appoint the third arbitrator within ten (10) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by said judge, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement, or difference, and the decision of any two of them shall be final, conclusive, and binding upon all parties. In all cases of arbitration, the parties hereto shall each pay the expenses of his or her attorneys' and witnesses' fees, and all other expenses of such arbitration shall be divided equally between the parties.

### ARTICLE XIII

#### Condemnation Proceedings

- 13.1 Condemnation of Common Areas and Facilities. In the event of condemnation or the exercise of the power of eminent domain whereby the federal government, the state, a political subdivision, or any other corporation, agency, or authority having the power of condemnation or eminent domain seeks to acquire any of the Common Areas or Facilities, such condemning authority may conduct negotiations with the Board of Directors of the Association and the Board of Directors may execute and deliver the appropriate conveyance in return for the agreed consideration. The Board of Directors shall allocate such consideration, whether received through negotiation or condemnation, to the repair, replacement, or restoration of Common Areas and Facilities, and any amount then remaining may be used to discharge the Association's obligation imposed by this Declaration.
- 13.2 Condemnation of Townhome Units. In the event that all or any part of the Townhome Units or other property not owned by the Association shall be taken by condemnation or the exercise of the power of eminent domain, the Townhome Unit Owners shall be free to assert their respective claims against the condemning authority, including any claims for severance damage, and to be entitled to the proceeds which are properly allocable to the respective Townhome Unit taken or condemned. Nothing contained in this Article 13 shall be construed as giving any Townhome Unit Owner priority over any rights of mortgagees in case of distribution of a condemnation award to any Townhome Unit Owner.



**ARTICLE XIV**  
**Board of Directors May Act for Townhome Unit Owners**

Whenever in this Declaration or the Bylaws, the Board of Directors or the members thereof are authorized or directed to acquire, hold, lease, mortgage, or convey any part of or interest in the Properties, or to acquire any lien thereon, or to acquire or receive the proceeds to any policy of insurance or other monies, goods, or chattels, with respect to the Properties, such action shall be carried out in the names of the members of the Board of Directors and their successors in office from time to time, as trustees, on behalf of some or all of the Townhome Unit Owners, as the case may be.

**ARTICLE XV**  
**Power of Attorney to Board of Directors**

Each Townhome Unit Owner, by accepting title to a Townhome Unit, thereby grants to the persons who shall from time to time constitute the Board of Directors, but subject to the terms and provisions of this Declaration, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Lot and the Townhome Unit thereon whose Owner desires to surrender, sell, or lease the same, or which may be the subject of a foreclosure or other judicial sale, in the name of the Board of Directors or its designee, corporate or otherwise, on behalf of all Townhome Unit Owners, and to convey, sell, lease, sublease, mortgage, or otherwise deal with any such unit so acquired or leased.

**ARTICLE XVI**  
**Right of Access**

The manager or any other person authorized by the Board of Directors shall have the right of reasonable access to each Townhome Unit for the purpose of correcting any condition originating in such Townhome Unit and/or threatening another Townhome Unit or the Common Areas and Facilities, and for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services or other Common Areas in such Townhome Unit or elsewhere in the Building on which such Townhome Unit is located, provided that requests for entry shall be made in advance and any such entry shall be at a time that is reasonably convenient to the Townhome Unit Owner. In case of an emergency situation, such right of entry shall be immediate, even though the Townhome Unit Owner may not then be present.



**ARTICLE XVII**  
**Electric, Gas, Sewer, and Water Services**

Electric, gas, water, and sewer services shall be supplied by the public utility companies serving the area directly to each Townhome Unit through a separate meter, and each Townhome Unit Owner shall be required to pay the bills for electricity, gas, water, and sewer services consumed, used, or provided in or to his or her Townhome Unit. Electricity, gas, water, and sewers serving the Common Areas and Facilities shall be separately metered, and the Board of Directors shall pay all bills for such utilities consumed in such portions of the Common Areas and Facilities, as a Common Expense.

**ARTICLE XVIII**  
**Mortgages**

- 18.1 Notice to Board of Directors. A Townhome Unit Owner who mortgages his or her Townhome Unit shall notify the Board of Directors of the name and address of his or her mortgagee and the Board of Directors shall maintain such information in a book entitled "Mortgages of Townhome Units."
- 18.2 Notice of Unpaid Common Charges. The Board of Directors, whenever so requested in writing by any mortgagee or contract seller of a Townhome Unit, shall promptly, in writing, notify the mortgagee or contract seller of any default in the performance by the individual Townhome Unit mortgagor or contract purchaser or any obligation under this Declaration and any then unpaid common charges assessed against the Townhome Unit.
- 18.3 Notice of Default. The Board of Directors, when giving notice to a Townhome Unit Owner of a default in payment of common charges or other default, shall within thirty (30) days following such default send a copy of such notice to the Townhome Unit Owner, including any contract seller, and to the holder of a mortgage covering such Townhome Unit whose name and address have theretofore been furnished to the Board of Directors.

**ARTICLE XIX**  
**Townhome Units Subject to Declaration, Bylaws, Rules and Regulations,  
and Master Declaration**

All present and future Owners, tenants, and occupants of the Townhome Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws of the Association, the rules and regulations of the Association, as they may be amended from time to time, and the Master Declaration. The acceptance of deed or conveyance or the entering into of a lease or the entering into occupancy of any Lot and Townhome Unit situated thereon shall constitute an agreement that the provisions of this Declaration, the Bylaws, the rules and regulations, as they may



be amended from time to time, and the Master Declaration are accepted and ratified by such Owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Townhome Unit situated thereon, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. A Townhome Unit Owner shall automatically be a member of the Association and the Master Association and shall remain a member of the Associations until such time as his or her legal ownership of a Townhome Unit ceases for any reason, at which time his or her membership in the Associations shall automatically cease. Failure of a Townhome Unit Owner to comply with this Declaration, the Bylaws, the rules and regulations, as they may be amended from time to time, and the Master Declaration, shall entitle the Association, the Master Association, or other Townhome Unit Owners to the following relief, in addition to the remedies that may be provided by law:

- 19.1 Enforcement. The Association, the Master Association, or any Townhome Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, the rules and regulations of the Association, the Master Association, or any restrictive covenants placed upon the property. Failure by the Association or by any Townhome Unit Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the further right by a three-fourths vote of its entire Board of Directors to levy fines up to and including Ten Thousand Dollars (\$10,000.00), against any Townhome Unit Owner who has breached or threatens to breach any of the provisions of this Declaration, the Bylaws of the Association, the rules and regulations of the Association, or the Master Declaration, and to charge such fine as an additional assessment against such Townhome Unit Owner in accordance with Article 8 above.
- 19.2 Negligence. A Townhome Unit Owner shall be liable for the expense of any maintenance, repair, or replacement to or of the Common Areas and Facilities or any Townhome Unit, including his or her own, rendered necessary by his or her act, neglect, or carelessness, or by that of any member of his or her household, or his or her or their guests, employees, agents, or lessees, but only to the extent that such expense is not fully covered by the proceeds of insurance. If the Association elects to carry a blanket insurance policy insuring all Townhome Units, a Townhome Unit Owner shall pay the Association the amount of any increase in its insurance premiums occasioned by the Townhome Unit Owner's use, misuse, occupancy, or abandonment of a Townhome Unit or its appurtenances, or of the Common Areas and Facilities.
- 19.3 Costs and Attorney Fees. In any proceeding arising because of an alleged failure of a Townhome Unit Owner to comply with the terms of the Declaration, the Bylaws, the rules and regulations of the Association, as they may be amended from time to time, or the Master Declaration, the Association shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.



- 19.4 Abatement and Enjoinment of Violations by Townhome Unit Owners. The violation of any of the rules and regulations adopted by the Board of Directors, or the breach of any Bylaw, the breach of any provision of this Declaration or the Master Declaration, shall give the Board of Directors the right, in addition to any other rights set forth herein: (a) to enter on or in the Townhome Unit on or in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Townhome Unit Owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; and/or (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. In the event any action is brought against a Townhome Unit Owner claiming, asserting, or enforcing a lien against the Townhome Unit or Common Areas and Facilities, the Townhome Unit Owner shall give prompt written notice thereof to the Board of Directors.
- 19.5 Remedies Cumulative. All rights, remedies, and privileges granted to the Association or Townhome Unit Owner or owners pursuant to the terms, provisions, covenants, or conditions of this Declaration, the Bylaws, the rules and regulations of the Association, or the Master Declaration, shall be deemed to be cumulative and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies, or privileges as may be available to such party at law or in equity.

## ARTICLE XX

### Amendments

This Declaration may be amended only by the Developer pursuant to its authority under Section 5.17 hereof or by the Board of Directors of the Master Association. This Declaration may otherwise be amended in the following manner:

- 20.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.
- 20.2 Resolution of Adoption. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by any two (2) members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, any amendment of this Declaration shall require the approval of the Owners of eighty percent (80%) of the Townhome Units.
- 20.3 Compliance with Master Association Declaration. All amendments shall be in compliance with the Master Association Declaration.



- 20.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with all the formalities of a deed. The amendment shall be effective when such certificate and a copy of the amendment are recorded in the Office of the Register of Deeds of Riley County, Kansas.

## ARTICLE XXI

### Architectural and Landscape Control; Design Review Committee; Design Standards

- 21.1 Design Review Committee. The Community Association shall have a Design Review Committee consisting of not less than three (3) nor more than five (5) persons, as specified from time to time by the Developer during periods in which the Developer has the right to appoint the members of the Design Review Committee, and thereafter, by resolution of the Board of the Community Association. The Developer shall retain the right to appoint, augment, or replace all members of the Design Review Committee for the Community until the date Developer shall own less than two (2) acres in the Residential District, as such term is defined in the Master Declaration referred to above. Thereafter, members of the Design Review Committee shall be appointed by the Board of the Community Association. Persons appointed to the Design Review Committee, other than those Persons appointed by the Developer, must be Community Association Members. Even after control is thus relinquished by Developer, Developer shall retain final authority over the decisions of the Design Review Committee until all land that is residential in nature is developed. The Developer voluntarily may (but shall not be required to) permit Community Association Members to appoint or replace one or more members of the Design Review Committee at any time.
- 21.2 Architectural Control. No exterior addition to or change or alteration in any Building (including painting and staining) shall be made until the plans and specifications showing the nature, kind, shape, heights, materials, exterior color scheme, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding buildings and topography by the Design Review Committee.
- 21.3 Interpretation and Waiver. In order to meet special situations which may not be foreseen, it may be desirable from time to time for the Design Review Committee to allow variances of certain requirements. Any variance granted is considered not to be precedent setting because the decision is being made in the context of the specific project in question with the welfare of the overall Community in mind. All approvals and consents of the Design Review Committee shall be in writing, and oral approvals or consents shall be of no force or effect.
- 21.4 Design Review Committee Authority and Limits of Liability.



- (a) The Design Review Committee may delegate its plan review responsibilities to one or more of its members or architectural consultants retained by the Design Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member or consultants, shall be equivalent to approval or disapproval by the entire Design Review Committee.
- (b) The address of the Design Review Committee shall be the address established from time to time by resolution of the Community Association. Such address shall be the place for the submittal of plans and specifications.
- (c) The establishment of the Design Review Committees shall not be construed as impairing the obligation of any Owner to maintain or repair his or her Lot as may otherwise be specified in this Declaration, the Community rules, or Community Association Articles or Bylaws.
- (d) No, fence, wall, or other structure, or improvement of whatever type shall be commenced, erected, or maintained on any Lot within the Properties, nor shall there be any addition to or change to the exterior of any residence, or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting of exterior walls, patio covers, and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) poor overall design quality; (iii) incompatible design elements; (iv) inappropriate design concept or design treatment; and (v) a design found to have an adverse effect on the character of the Properties or its residents.
- (e) By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Community Association, any of its members, its officers, its Board, nor the Developer assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Community Association, its officers, its Board, nor the Developer shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings, and specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; (iii) the development, or manner of development, of any Lot within the Properties; or (iv) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that such action, on the basis of



the actual knowledge possessed by the Person in question, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances and regulations including, but not limited to, zoning ordinances and building codes.

- (f) Any member or authorized consultant of the Design Review Committee, the Developer or its representatives, or any authorized officer, director, employee, or agent of the Community Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Townhome Unit, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Townhome Unit to ascertain that such improvements have been, or are being, built in compliance with the plans and specifications approved by the Design Review Committee and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 30 days) of a request therefor from any Owner as to his or her Townhome Unit, which request shall contain an affirmative statement by such Owner of such Owner's good faith belief that such Owner is in compliance with the approved plans and specifications and the other provisions hereof.
- (g) The Community Association may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration or the Master Declaration in order to enforce compliance with provisions set forth herein. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE MASTER ASSOCIATION AND COMMUNITY ASSOCIATION BOARD MAY FIX A FINE OF UP TO \$10,000 FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL. The Community Association may further take such legal action as it deems necessary to enforce such compliance.

21.5 Public Approvals. All pertinent requirements of public agencies shall be followed in the development of the Townhome Unit, and all plans must be approved by the appropriate departments of the City.

## ARTICLE XXII

### Limitation of Restrictions

The foregoing restrictions shall not apply to the activities of the Association, the Master Association, or the activities of the Developer, its agents, and employees. The Developer may, while constructing and selling Townhome Units in or upon such portions of the property as Developer may determine, maintain such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, and signs.



**ARTICLE XXIII**  
**Severability**

The invalidity in whole or in part of covenants or restrictions, or any paragraph, subparagraph, sentence, clause, phrase, or word, or other provision of this Declaration shall not affect the validity of the remaining portions thereof. The determination that any provision of the Townhouse Ownership Act or any section, sentence, clause, phrase, or word or the application hereof in any circumstance is invalid, and shall not affect the validity of any provision of this Declaration not in direct conflict with such holding or determination.

**ARTICLE XXIV**  
**Captions**

The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, modify, or supplement this Declaration or the intent of any provision thereof.

**ARTICLE XXV**  
**Construction**

Whenever the context so permits, the use of plural shall include the singular, the singular plural.

IN WITNESS WHEREOF, Developer has executed this Declaration the day and year first above written.

**GRAND MERE DEVELOPMENT, INC.**

By: Mary L. Vanier  
Mary L. Vanier, President  
**Developer**



## ACKNOWLEDGMENT

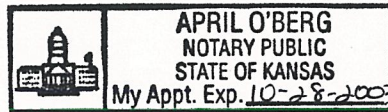
STATE OF KANSAS, COUNTY OF RILEY, ss:

On this 19<sup>th</sup> day of June 2001, before me, appeared Mary L. Vanier, to me personally known, who, being duly sworn, did say that she is President of Grand Mere Development Inc., and that the foregoing instrument was signed on behalf of the corporation, and by the authority of the corporation, and she further acknowledged the instrument to be the free act and deed of Grand Mere Development, Inc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last written above.

April O'Berg  
Notary Public

My Appointment Expires:





**APPROVAL**

The undersigned, the "Master Association" pursuant to the Declaration of Covenants, Conditions, and Restrictions for the Grand Mere Property Residential District and pursuant thereto does hereby approve the foregoing Grand Ridge at Grand Mere Community Declaration.

**GRAND MERE DEVELOPMENT, INC.**

By: Mary L. Vanier  
Mary L. Vanier, President



**Exhibit "A"**

Tracts A and B, and Lots 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B, 10A, and 10B, of Grand Mere, Unit 2, to the City of Manhattan, Riley County, Kansas



## TABLE OF CONTENTS

<b>ARTICLE I</b>	<b>Submission of Real Estate to Kansas Townhouse Ownership Act</b>	<b>1</b>
<b>ARTICLE II</b>	<b>Definitions</b>	<b>1</b>
2.1	<u>Board of Directors or Board</u>	1
2.2	<u>Building</u>	1
2.3	<u>Bylaws</u>	1
2.4	<u>Common Areas and Facilities or Common Areas</u>	1
2.5	<u>Common Expenses</u>	2
2.6	<u>Community</u>	2
2.7	<u>Community Association</u>	2
2.8	<u>Declaration</u>	2
2.9	<u>Design Review Committee (DRC)</u>	2
2.10	<u>Developer</u>	2
2.11	<u>Golf Course</u>	2
2.12	<u>Lot</u>	2
2.13	<u>Master Association</u>	3
2.14	<u>Master Declaration</u>	3
2.15	<u>Person(s)</u>	3
2.16	<u>Plats</u>	3
2.17	<u>Properties</u>	3
2.18	<u>Townhome Unit</u>	3
2.19	<u>Townhome Unit Owner</u>	3
<b>ARTICLE III</b>	<b>Description of Townhome Units</b>	<b>3</b>
<b>ARTICLE IV</b>	<b>Property Rights</b>	<b>4</b>
4.1	<u>Ownership of Townhome Units</u>	4
4.2	<u>Townhome Unit Owners' Easements of Enjoyment</u>	4
4.3	<u>Delegation of Use</u>	4
4.4	<u>Easements</u>	4
<b>ARTICLE V</b>	<b>Community Association</b>	<b>6</b>
5.1	<u>Purpose of the Community Association</u>	6
5.2	<u>Membership in Community Association</u>	6
5.3	<u>Pledge of Voting Rights</u>	7
5.4	<u>Assignment of Developer's Voting Rights</u>	7
5.5	<u>Board of Directors of the Community Association</u>	7
5.6	<u>Duties and Powers of the President of the Community Association</u>	8
5.7	<u>President's Determination Binding</u>	9
5.8	<u>Approval of Members</u>	9
5.9	<u>Additional Provisions in Articles and Bylaws</u>	9



5.10	<u>Community Association Rules</u>	10
5.11	<u>Indemnification</u>	10
5.12	<u>Non-Liability of Officials</u>	11
5.13	<u>Easements</u>	11
5.14	<u>Accounting</u>	11
5.15	<u>Records</u>	11
5.16	<u>Managing Agent</u>	12
5.17	<u>Developer's Control of the Community Association</u>	12
<b>ARTICLE VI</b>	<b>Powers and Duties of the Association</b>	12
6.1	<u>Duties</u>	12
6.2	<u>Powers</u>	13
<b>ARTICLE VII</b>	<b>Maintenance Obligations of Townhome Unit Owners</b>	14
7.1	<u>Maintenance of Interiors of Townhome Units</u>	14
7.2	<u>Routine Maintenance</u>	14
7.3	<u>Exterior Painting</u>	15
7.4	<u>Cooperation with Association</u>	15
<b>ARTICLE VIII</b>	<b>Covenant for Assessments</b>	15
8.1	<u>General Assessments for Common Expenses</u>	15
8.2	<u>Special Assessments</u>	15
8.3	<u>Determination and Payment of Assessments</u>	15
8.4	<u>Other Assessments</u>	16
8.5	<u>Master Association Assessment</u>	16
8.6	<u>Assessments for Emergencies</u>	16
8.7	<u>Assessment Roll</u>	16
8.8	<u>Liability for Assessments</u>	16
8.9	<u>Date of Commencement of Assessments</u>	16
8.10	<u>Default in Payment of Assessments</u>	17
8.11	<u>Lien for Assessments</u>	17
8.12	<u>Rental Pending Foreclosure</u>	18
8.13	<u>Statement of Common Charges</u>	18
8.14	<u>Accounts</u>	18
	(a) <i>Common Expense Account</i>	18
	(b) <i>Alteration and Improvement Account</i>	19
	(c) <i>Reconstruction and Repair Account</i>	19
	(d) <i>Emergency Account</i>	19
	(e) <i>Reserve Account</i>	19
8.15	<u>Developer's Payments during Sale and Development Period</u>	19
<b>ARTICLE IX</b>	<b>Insurance and Casualty Losses</b>	19
9.1	<u>Insurance</u>	19
	(a) <i>Individual Units</i>	19



(b)	<i>Common Area Fire and Extended Coverage</i>	20
(c)	<i>Common Area Liability</i>	20
(d)	<i>Directors' and Officers' Liability Insurance</i>	21
9.2	<u>Disbursement of Proceeds</u>	21
9.3	<u>Repair or Reconstruction after Fire or Other Casualty</u>	21
<b>ARTICLE X</b>	<b>Association</b>	23
10.1	<u>Purpose of the Community Association</u>	23
10.2	<u>Limitations upon Liability of Association</u>	24
10.3	<u>Restraint upon Assignment of Shares in Assets</u>	24
10.4	<u>Approval or Disapproval of Matters</u>	24
10.5	<u>Voting Rights</u>	24
10.6	<u>Books of Receipts and Expenditures</u>	24
10.7	<u>Managing Agent or Manager</u>	24
10.8	<u>Notification to First Mortgagees</u>	24
10.9	<u>Legal Action</u>	25
10.10	<u>Borrow Money</u>	25
10.11	<u>Change of Membership in Association</u>	25
10.12	<u>Hiring of Professionals</u>	26
<b>ARTICLE XI</b>	<b>Use of the Properties</b>	26
11.1	<u>Common Areas and Facilities</u>	26
11.2	<u>Townhome Units</u>	26
11.3	<u>Lawful Use</u>	26
11.4	<u>Leasing</u>	26
11.5	<u>Occupancy Restrictions</u>	27
11.6	<u>Residential Use</u>	27
11.7	<u>Signs</u>	28
11.8	<u>Animals</u>	29
11.9	<u>Nuisances</u>	29
11.10	<u>Boats and Motor Vehicles</u>	29
11.11	<u>Lights</u>	29
11.12	<u>Antennas</u>	29
11.13	<u>Garbage</u>	29
11.14	<u>Safe Condition</u>	30
11.15	<u>Basketball Goals</u>	30
11.16	<u>Clothes Drying Area</u>	30
11.17	<u>No Obstructions to Drainage</u>	30
11.18	<u>Outbuildings Prohibited</u>	30
11.19	<u>Above-Ground Swimming Pools</u>	30
11.20	<u>Storage Tanks</u>	30
11.21	<u>Garage Doors</u>	30
11.22	<u>Solar Panels</u>	30
11.23	<u>Fences</u>	31



11.24	<u>Flagpoles</u>	31
11.25	<u>Lawn Ornamentation</u>	31
11.26	<u>Subsequent Modifications</u>	31
11.27	<u>Enforcement</u>	31
11.28	<u>Modification</u>	31
<b>ARTICLE XII</b>	<b>Party Walls</b>	31
12.1	<u>General Rules of Law to Apply</u>	31
12.2	<u>Weatherproofing</u>	31
12.3	<u>Arbitration</u>	32
<b>ARTICLE XIII</b>	<b>Condemnation Proceedings</b>	32
13.1	<u>Condemnation of Common Areas and Facilities</u>	32
13.2	<u>Condemnation of Townhome Units</u>	32
<b>ARTICLE XIV</b>	<b>Board of Directors May Act for Townhome Unit Owners</b>	33
<b>ARTICLE XV</b>	<b>Power of Attorney to Board of Directors</b>	33
<b>ARTICLE XVI</b>	<b>Right of Access</b>	33
<b>ARTICLE XVII</b>	<b>Electric, Gas, Sewer, and Water Services</b>	34
<b>ARTICLE XVIII</b>	<b>Mortgages</b>	34
18.1	<u>Notice to Board of Directors</u>	34
18.2	<u>Notice of Unpaid Common Charges</u>	34
18.3	<u>Notice of Default</u>	34
<b>ARTICLE XIX</b>	<b>Townhome Units Subject to Declaration, Bylaws, Rules and Regulations, and Master Declaration</b>	34
19.1	<u>Enforcement</u>	35
19.2	<u>Negligence</u>	35
19.3	<u>Costs and Attorney Fees</u>	35
19.4	<u>Abatement and Enjoinment of Violations by Townhome Unit Owners</u>	36
19.5	<u>Remedies Cumulative</u>	36
<b>ARTICLE XX</b>	<b>Amendments</b>	36
20.1	<u>Notice</u>	36
20.2	<u>Resolution of Adoption</u>	36
20.3	<u>Compliance with Master Association Declaration</u>	36
20.4	<u>Execution and Recording</u>	37



ARTICLE XXI	Architectural and Landscape Control; Design Review Committee;	
	Design Standards .....	37
21.1	<u>Design Review Committee</u> .....	37
21.2	<u>Architectural Control</u> .....	37
21.3	<u>Interpretation and Waiver</u> .....	37
21.4	<u>Design Review Committee Authority and Limits of Liability</u> .....	37
21.5	<u>Public Approvals</u> .....	39
ARTICLE XXII	Limitation of Restrictions .....	39
ARTICLE XXIII	Severability .....	40
ARTICLE XXIV	Captions .....	40
ARTICLE XXV	Construction .....	40
ACKNOWLEDGMENT	.....	41
APPROVAL	.....	42