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**AMENDED AND RESTATED DECLARATION OF RESTRICTIONS AND
SUBMISSION TO TOWNHOME OWNERSHIP UNDER SECTION 58-3700 ET SEQ.,
KANSAS STATUTES ANNOTATED FOR
ENCLAVE AT THE RESERVE TOWNHOMES**

GRANTOR: Reserve Townhomes, LLC

**GRANTEE: Reserve Townhomes, LLC
910 S.E. 7th Street Terrace, Lee's Summit, Missouri 64063**

Relating to Premises in:
Johnson County, Kansas

SEE EXHIBIT "A" (LEGAL DESCRIPTION)

DATED: As of July 28, 2008

AMENDED AND RESTATED DECLARATION OF
ENCLAVE AT THE RESERVE TOWNHOMES

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AMENDED AND RESTATED DECLARATION OF
ENCLAVE AT THE RESERVE TOWNHOMES

THIS AMENDED AND RESTATED DECLARATION is made as of the 28th day of July, 2008, by RESERVE TOWNHOMES, LLC, a limited liability company ("**Developer**").

WITNESSETH:

WHEREAS, Developer owns the land in the City of Lenexa, Johnson County, Kansas, described in **Exhibit A** hereto (together with any land hereafter made subject to this Declaration, as herein provided, the "**District**"); and

WHEREAS, the plat of land known as TOWNHOMES AT THE RESERVE has been filed with the Register of Deeds of Johnson County, Kansas at Plat Book 200705 at Page 003336 (the "Plat"); and

WHEREAS, the Plat creates TOWNHOMES AT THE RESERVE, a residential subdivision composed of lots and tracts described on **Exhibit "A"** attached hereto; and

WHEREAS, the Declaration of Restrictions and Submission to Townhome Ownership under Section 58-3700 et seq., Kansas Statutes Annotated for Enclave at The Reserve Townhomes dated August 08, 2007 was recorded August 15, 2007 at Book 200708 and Page No. 004882 as instrument 20070815000482 in the Office of the Register of Deeds for Johnson County, Kansas at Olathe; and

WHEREAS, Developer is the owner of all of the lots and land shown on the Plat (including all 4 plex and all 5 plex buildings) and now desires to amend and restate the Declaration of Restrictions referenced above; and

WHEREAS, Developer intends to amend the Declaration of Restrictions referenced above so as to cover all 4 plex buildings designated as Townhome Property and all additional areas as designated on the Plat; and

WHEREAS, Developer also owns the 5 plex buildings designated as Condominium Property as shown on the Plat, the Enclave at the Reserve Condominiums, and has submitted or will submit such 5 plex buildings designated as Condominium Property to the Condominium Ownership Act.

WHEREAS, Developer intends to create one association, the members of which shall consist of both Townhome Unit Owners and Condominium Unit Owners; and

WHEREAS, Developer intends (but shall not be obligated) to develop the District or cause it to be developed by others as a high-quality, single-family residential development; and


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WHEREAS, Developer intends to develop the District in conjunction with the Enclave at the Reserve Condominium District (together the "Master District"), so that both communities can co-exist in harmony with each other.

WHEREAS, Developer desires to create a homes association, the members of which shall be the owners of individual units, both Townhome and Condominium, within the Master District, for the purposes of maintaining the appearance and quality of certain common areas and district facilities serving the Master District, providing certain services to the unit owners and for the other purposes hereinafter set forth; and

WHEREAS, Developer desires to establish easements, covenants, conditions, restrictions and obligations upon the District, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the District.

NOW, THEREFORE, in consideration of the premises, the Developer for itself and its successors, grantees and assigns, hereby agrees to amend the Declaration of Restrictions for ENCLAVE AT THE RESERVE as follows:

NOW, THEREFORE, Developer hereby declares that all property within the District shall hereafter be held, transferred, sold, conveyed, mortgaged, leased, occupied and used subject to the covenants, conditions, restrictions, assessments, liens, easements, privileges, rights and other provisions hereinafter set forth, all of which shall run with the land and be binding upon all property within the District and all parties having or acquiring any right, title or interest in or to any property within the District, and shall inure to the benefit of and be a burden upon each owner of land within the District.

ARTICLE 1

DEFINITIONS

The following terms as used in this Declaration shall have the meanings set forth below unless the context clearly requires otherwise:

1.1 "Allocated Share of Reserves" constitutes the total - amount of monies actually contributed by each separate Unit Owner, either Townhome Unit Owner or Condominium Unit Owner, which has been allocated by the Board as Reserve Funds.

1.2 "All Unit Owners" and "All Owners" means that person or those persons owning a fee simple interest in a Unit or Units including both, either Townhome Units or Condominium Units, each of whom is also a "member" of the Association.

1.3 "All Units" means both Townhome Units and Condominium Units.

1.4 "Assessable Condominium Unit" means each Condominium Unit as defined in Condominium Declaration, owned by a person or persons or entity or entities other than Developer.

1.5 **"Assessable Unit" or "Assessable Townhome Unit"** means each Townhome Unit, as defined by the Townhome Ownership Act, owned by a person or persons or entity or entities other than Developer.

1.6 **"Association" and "Enclave at the Reserve Association"** mean the RESERVE 8TH PLAT HOMES ASSOCIATION, a Kansas not-for-profit corporation and is also one and the same; as the association created for All Units in the Master District, both Townhome and Condominium.

1.7 **"Board"** means the Board of Trustees of the Association.

1.8 **"Design Standards"** means the Building Design Standards as then currently adopted by the Design Review Committee. The current version is dated July 28, 2008 but they may be amended from time to time as provided herein.

1.9 **"Bi-Level and "Split-Level"** means a residence that is divided vertically so that the floor level rooms in one part is approximately midway between the levels of the two successive stories in an adjoining part.

1.10 **"City"** means the City of Lenexa, Kansas.

1.11 **"Common Areas" or "Townhome Common Areas"** mean all of the Townhome residential buildings or structures (all four-plex buildings) and the other improvements fixtures and equipment or other tangible personal property located on, owned or used in connection with or forming a part of any of the Townhome residential buildings or structures and the common areas thereto along with any easements, leases, licenses or other rights of use granted to the Board by or at the direction of Developer, and the land or other property which is the subject thereof. The Common Areas are for the benefit of Townhome Owners, tenants and occupants only.

1.12 **"Condominiums"** means the Enclave at the Reserve Condominiums, as defined in the Condominium Declaration, consisting of the 5 plex buildings as designated on the recorded Plat.

1.13 **"Condominium Declaration"** means the Enclave at the Reserve Condominiums Declaration which is dated as of July 28, 2008 and recorded _____, at Book _____ at Page _____, a copy of which is attached hereto as Exhibit "B".

1.14 **"Condominium Occupants"** means a person lawfully residing in a Condominium Unit at the Enclave at the Reserve Condominiums, regardless of whether or not that person is the owner of the Condominium Unit.

1.15 **"Condominium Owners"** mean that person or those persons owning a fee simple interest in that portion or portions of the Condominium Property described as a unit or units under the provisions of the Condominium Act, each of whom is also a member of the Association Reserve 8th Plat Homes.

1.16 **"Condominium Sub-Board"**

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means all of the members of the Board of Trustees constituting the Condominium Trustees, who represent the Condominium Unit Owners.

1.17 **"Condominium Sub-Group"** means the members of the Association who are Condominium Unit Owners.

1.18 **"Condominium Unit" or "Condominium Units"** means that portion or portions of the Condominium Property described as a unit or units in the Condominium Declaration, and is that portion of the Condominium constituting a "unit" or "units" of the Condominium under the provisions of the Condominium Act.

1.19 **"Declaration" and "Townhome Declaration"** mean this Declaration of Enclave at the Reserve, as it may be amended or supplemented from time to time.

1.20 **"Developer" and "Declarant"** shall mean RESERVE TOWNHOMES, LLC, a Kansas limited liability company.

1.21 **"District" or "Subdivision"** as used in the Declaration shall mean all of the land described on **Exhibit "A"** attached hereto which consists of the Townhome property and common areas. If and when other land shall, in the manner hereinafter provided for, be added to that described above, then the term "district" and "subdivision" shall thereafter mean all land which shall from time to time be subjected to the terms of this agreement, including any future modifications thereof.

1.22 **"District Facilities"** means (a) all areas and facilities within the District designated by Developer for the general use or benefit of all Owners, tenants and occupants of the District, and over which Developer has granted a non-exclusive perpetual easement to all Condominium Unit Owners and Condominium Occupants, agents, servants, customers, invitees and licensees; (b) the area which includes but is not limited to, any parks, green space, landscaped areas and landscaping features; playgrounds, jogging or walking trails, fountains and other recreational areas; sidewalks and walkways; special and decorative lighting; signs, monuments, statuary, bridges and fences; entrance gates and structures; median strips and islands in streets; lakes, streams, creeks and drainage and retention facilities; street lighting; and fencing around the perimeter of the District; and (c) all buildings, structures and other improvements, fixtures and equipment and other tangible personal property located on, owned or used in connection with or forming a part of any of the foregoing, **PROVIDED, HOWEVER**, the foregoing does not constitute a representation or warranty that any Common Facility so enumerated will exist within the District and **PROVIDED, HOWEVER** that the district facilities **DO NOT** include the residential buildings constituting the Townhome Common Areas and **PROVIDED, HOWEVER** that the district facilities **DO NOT** include the Limited Common Areas.

1.23 **"Improved Property"** means a single tract on which tract a residence has been erected or is in the process of erection or on which any other building not in violation of the restrictions then of record is erected or is in the process of erection. Any such tract may consist of one or more contiguous lots or part or parts thereof. Any other land covered by this Declaration shall be deemed to be vacant and unimproved.

1.24 **"Joint Common Areas"** means both the Townhome Common Areas and the Condominium Common Areas

1.25 **"Joint Driveway"** means that portion of a driveway that is common to provide access to the driveway to the garages of more than one Unit. The Developer will provide pavement and curbing. The District Facilities Committee shall provide maintenance and/or replacement of the Joint Driveways.

1.26 **"Limited Common Areas"** means those Common Areas serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful occupants of that Unit or Units either in this Declaration, or by the Board, including but not limited to each Unit's Driveway and garage floor, any walkways servicing only one particular Unit (sidewalk leading to main entrance of Unit) and any patio, balcony or deck areas servicing only one particular Unit.

1.27 **"Lot"** means each separate parcel within the District, which can be either any numbered lot as platted, or any tract or tracts of land as conveyed, which may consist of one or more numbered lots, as platted, or part or parts of one or more platted lots and upon which a residential building may be erected, as shown on the Plat and in accordance with the restrictions hereinafter set forth, except any such separate parcel which is included within the District Facilities.

1.28 **"Master District"** as used in the Declaration shall mean all of the land in the District along with all the Condominium property and all common areas thereto.

1.29 **"Plat"** means, collectively, all subdivision plats of land within the District, as approved by the City and recorded with the Register of Deeds, as the same may be amended from time to time.

1.30 **"Register of Deeds"** means the Register of Deeds for Johnson County, Kansas.

1.31 **"Shared Facilities"** means the shared facilities as referenced in the Shared Facilities Agreement.

1.32 **"Shared Facilities Agreement"** means that agreement entered into between The Reserve Homeowners Association and Declarant dated October 12, 2006 and recorded October 17, 2006 at Book 200610 and page 005621 at the Johnson County Recorder of Deeds.

1.33 **"Shared Facilities Committee"** means the committee formed pursuant to the Shared Facilities Agreement which shall oversee and manage the maintenance, assessments, activities and decisions associated with the Shared Facilities.

1.34 **"Street"** means any street, road, drive, or terrace of whatever name, as shown on the Plat of RESERVES TOWNHOMES or plats of land subsequently encumbered with this Declaration.

1.35 **"Townhome Property"** means the tracts of land hereinafter described as being submitted to the Townhome Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.

1.36 **"Townhome Sub-Board"** means all of the members of the Board of Trustees constituting the Townhome Trustees, who represent the Townhome Unit Owners.

1.37 **"Townhome Sub-Group"** means the members of the Association who are Townhome Unit Owners.

1.38 **"Townhome Unit Owner"** means each person or persons and/or entity or entities who may from time to time own fee simple title to a Townhome Unit.

1.39 **"Tract"** shall mean any area identified by a letter of the English Alphabet or as otherwise identified and shown on the Plat.

1.40 **"Unit", "Units", "Townhome Unit" or "Townhome Units"** mean one single-family Townhome residential unit described as a townhouse unit in the Townhouse Ownership Act and shown on the drawing attached as Exhibit C.

ARTICLE 2

ASSOCIATION

2.1 **Purposes of Association.** The Association has been formed to be and to serve as the association for both the Townhome Unit Owners and Condominium Unit Owners. The Declarant is presently the sole member of the Association. The Association members shall elect the representatives from the Association to the Board of Trustees and take any necessary action as provided or contemplated in this Declaration and the Association's Articles of Incorporation and Bylaws or Articles of Agreement and Operating Agreement. The Association shall not be deemed to be conducting a business of any kind.

2.2 Membership in Association.

(a) Developer shall be a member of the Association by virtue of it being the Developer and its ownership of Lots within the District as of the date of recording of this Declaration. Each other Owner shall, upon acquisition of fee simple title to any Townhome Unit or Condominium Unit, automatically become a member of the Association. Notwithstanding any combination of Townhome Units or Condominium Units as originally platted owned by an Owner, each Owner shall be entitled to only one Association membership but, subject to the provisions of Section 3.5, shall have one vote in the Association per Townhome Unit or Condominium Unit owned in fee simple, as originally platted. If an Owner (other than Developer) is comprised of more than one person and/or entity, they shall designate one of their number to hold the Association membership, and each member (other than Developer) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or

(5) if the Owner is or includes a limited liability company or an association, an individual who is a member of the limited liability company or association. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner.

(b) A membership in the Association shall not be transferred, pledged or alienated in any way except as expressly provided in this Declaration. Subject to the provisions of paragraph (a) of this Section 2.2, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Townhome Unit or Units or Condominium Unit or Units, to which the membership appertains, whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Townhome Unit or Units or Condominium Unit or Units; however, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

(c) Notwithstanding the foregoing provisions of this Section 2.2, if an Owner has granted an irrevocable proxy or otherwise pledged the voting rights appurtenant to such Owner's membership in the Association to a mortgagee as additional security, the votes of such mortgagee shall be recognized if a copy of the proxy or other instrument pledging such voting rights has been provided to the Association. If more than one such instrument is provided, the Association shall recognize the rights of the mortgagee under the instrument first provided.

(d) If any lender to which Developer assigns as security all or substantially all of Developer's rights under this Declaration shall succeed to Developer's interest by virtue of such assignment, the absolute voting rights of Developer as provided in Section 3.5 shall not be terminated by such assignment, and such lender shall hold Developer's membership and voting rights on the same terms as they were held by Developer.

2.3 **"Association Sub-Groups"** The Association may be divided into two sub-groups, one consisting of Townhome Unit Owners and one consisting of Condominium Unit Owners, when such separation and autonomy is necessitated by provisions of this Declaration or by law. Trustees representing the respective Associations, the Board, the Townhome Sub-Board or the Condominium Sub-Board (defined herein), shall when required by this Declaration or by law, cause the Members of the Association to break off into and form respective Sub-Groups of the Association.

(1) The Townhome Sub-Group shall constitute and consist of all Association members who are Townhome Unit Owners (the "Townhome Sub-Group"). The Townhome Sub-Group shall be entitled to make decisions affecting only the Townhome Unit Owners or Townhome Property as further provided in this Declaration or when such decisions are required by law or by the Townhome Act.

(2) The Condominium Sub-Group shall constitute and consist of all Association members who are Condominium Unit Owners (the "Condominium Sub-Group"). The Condominium Sub-Group shall be entitled to make decisions affecting only the Condominium Unit Owners or Condominium Property as further provided in this Declaration,

the Condominium Declaration or where such decisions are required by law or by the Condominium Act.

ARTICLE 3

EXECUTIVE BOARD OF TRUSTEES

3.1 Composition of Board.

(a) The Board shall be composed of and represent the members of the Association. The Board of Trustees shall be composed of five persons and shall represent both the Townhome Unit Owners and the Condominium Unit Owners. The number of members which represent the Townhome Unit Owners and the number of members which represent the Condominium Unit Owners shall reflect the proportionate representation of each Sub Group; such proportional representation shall equal the total number of Townhome Unit Owners compared to the total number of Condominium unit Owners ("Proportionate "Representation"); but in any event each respective groups shall at all times have at least one representative Board member. For example if the ratio of Townhome Unit Owners to Condominium Unit Owners is roughly 4/1 then four members shall represent the Townhome Unit Owners (the "Townhome Trustees") and one shall represent the Condominium Unit Owners (the "Condominium Trustees") and vice versa. The number of Board of Trustees members shall only be changed upon approval of the majority of both the Townhome Sub-Group and the Condominium Sub-Group.

(b) The Board initially shall be those persons named as the initial Trustees pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant.

(c) The Townhome Trustees shall be elected as follows:

(1) No later than the time that one-third of the Townhome Units have been sold, all members of the Townhome Sub-Group comprising of Townhome Unit Owners other than the Declarant may meet and elect one Townhome Trustee at such meeting to replace whichever Townhome Trustees Declarant designates; and

(2) No later than the time that two-thirds of the Townhome Units have been sold, all members of the Townhome Sub-Group, comprising of all Townhome Unit Owners other than the Declarant may meet and elect up to two Townhome Trustees at such meeting to replace whichever Townhome Trustees Declarant designates; and

(3) Within the earlier of (a) ten years from the date of the establishment of the Association, (b) the effective date designated by Declarant in a notice to the members of the Association, or (c) the time that all of the Townhome Units have been sold, all members of the Townhome Sub-Group, comprising of all Townhome Unit Owners other than the Declarant shall meet and elect the number of Townhome Trustees allotted pursuant to the

Proportionate Representation at such meeting to replace whichever Townhome Trustees Declarant designates; and

(4) The terms of the Townhome Trustees shall be staggered so that the terms of no less than roughly one-third of the Trustees will expire and successors will be elected at each annual meeting of the Association.

(d) The Condominium Trustees shall be elected as follows:

(1) No later than the time that one-half of the Condominium Units have been sold, all members of the Condominium Sub-Group, comprising of all Condominium Unit Owners other than the Declarant may meet and elect one Condominium Trustee at such meeting to replace whichever Condominium Trustee Declarant designates; and

(2) Within the earlier of (a) ten years from the date of the establishment of the Association, (b) the effective date designated by Declarant in a notice to the members of the Association, or (c) the time that all of the Condominium Units have been sold, all members of the Condominium Sub-Group, comprising of all Condominium Unit Owners other than the Declarant shall meet and elect the number of Condominium Trustees allotted pursuant to the Proportionate Representation at such meeting to replace whichever Condominium Trustees Declarant designates.

(3) The terms of the Condominium Trustees shall be staggered so that the terms of no less than roughly one-half of the Trustees will expire and successors will be elected at each annual meeting of the Association.

(e) Notwithstanding the foregoing, the members of the Association acting together by the vote of all members exercising not less than a majority of the voting power of both the Townhome Sub-Group and the Condominium Sub-Group, may, from time to time, change the number and terms of the members of the Board of Trustees, provided, that in any such event the terms of not less than one-third of the Townhome Trustees and one-half of the Condominium Trustees shall expire annually.

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

3.2 Sub Boards.

(a) The Trustees representing the respective Sub-Groups, the Townhome Trustees and the Condominium Trustees, shall when required by this Declaration or by law, break off into and form respective Sub-Boards which shall represent each respective Sub-Group.

(1) The Townhome Sub-Board shall constitute and consist of the Townhome Trustees. The Townhome Sub-Board shall be entitled to make decisions affecting only the Townhome Unit Owners or Townhome Property as further provided in this Declaration or when such decisions are required by law or by the Townhome Act.

(2) The Condominium Sub-Board shall constitute and consist of the Condominium Trustees. The Condominium Sub-Board shall be entitled to make decisions affecting only the Condominium Unit Owners or Condominium Property as further provided in the Condominium Declaration or where such decisions are required by law or by the Condominium Act.

(b) Each Sub-Board shall have and retain the same powers and duties granted the Board of Trustees and may exercise such powers as required by the Townhome Declaration, the Condominium Declaration, or applicable law.

3.3 **Powers and Duties of the Board of Trustees**

(a) The Board shall have the powers and duties set forth in the Articles of Incorporation and Bylaws, provided such powers and duties are not inconsistent with the provisions of this Declaration.

(b) The Board shall maintain, improve, operate, insure and administer the Joint Common Areas in the Master District, including taking necessary action to levy and collect the assessments herein provided for, pay expenses and losses and do such other things as are provided or contemplated in this Declaration as well as the Articles of Incorporation and Bylaws. The Board shall not be deemed to be conducting a business of any kind, and shall hold and apply all funds it receives for the benefit of the Master District in accordance with the provisions of this Declaration and the Articles of Incorporation and Bylaws.

(c) In addition to and not in limitation of the powers and duties of the Board provided in the Articles of Incorporation and Bylaws, the Board shall have the power, in its discretion, to do any of the following, which it may exercise or perform whenever, in its discretion, it may deem necessary or desirable:

(1) Levy and collect the assessments and charges provided for in this Declaration.

(2) Enforce or sue for damages as a result of the violation of, either in its own name or in the name of any Owner, any and all terms, provisions, covenants, conditions, restrictions, liens and easements imposed upon the land in the Master District by this Declaration. To the extent permitted by law, the party against whom such enforcement or damages are sought shall pay all costs and expenses (including attorneys' fees) of the Board with respect to any such action or proceeding, and any such costs and expenses not paid by such party shall be paid out of the general fund of the Board herein provided for. Nothing herein shall be deemed to prevent any Owner having the right to do so from enforcing, in such Owner's own name, any of the terms, provisions, covenants, conditions, restrictions and easements established by this Declaration.

(3) Exclusively manage and control all Joint Common Areas for the benefit of the Owners, including exercise of control over such easements, leases, licenses, usage rights and other rights and property as the Association may establish or acquire from time to time.

(4) Elect the representatives to the District Facilities Committee, approve actions of the District Facilities Committee when required, administer all assessments levied by the District Facilities Committee and perform all duties related to and insuring the District Facilities as required by the District Facilities Committee.

(5) Elect the representatives to the Shared Facilities Committee, approve actions of the Shared Facilities Committee when required and administer all assessments levied by the Shared Facilities Committee.

(6) Grant upon, across or under property owned or controlled by the Association such permits, licenses, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains, television cable and other public or private utilities, roadways or other purposes as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Master District or any part thereof or the preservation of the health, safety, convenience and welfare of the Owners.

(7) Acquire by lease or own title to such real property as may be reasonably necessary in order to carry out the purposes of the Board and the Association.

(8) Accept all easements, leases, licenses and other usage rights and title to all property and improvements which may be granted, conveyed or assigned to the Association or by or at the direction of Developer in Developer's sole discretion.

(9) Install and maintain such lighting facilities as the Board may deem advisable on All Units and Joint Common Areas.

(10) Obtain property insurance on the Joint Common Areas, Limited Common Areas and on the District Facilities as required in Article 9 of this Declaration.

(11) Borrow money in such amounts, at such rates of interest, upon such terms and security and for such periods of time as the Board may deem necessary or appropriate, in its sole discretion, **PROVIDED** that the foregoing shall not be construed to give the Board any right or authority to mortgage any part of the Joint Common Areas or District Facilities, unless approved by at least seventy-five percent (75%) of the Sub-Group which owns the subject property.

(12) Adopt and enforce reasonable rules and regulations for use of the Joint Common Areas and the other land in the Master District to preserve or enhance the quality or appearance of the Master District or the safety or convenience of the users thereof or otherwise to promote the interests of Owners, tenants and occupants of land within the Master District, and amend or supplement such rules and regulations at any time and from time to time.

(13) Exercise any other powers elsewhere provided to the Board in this Declaration.

(d) The Board shall have the duty to do or cause to be done the following:

(1) If any vacant or unimproved Lot or Unit, either Townhome or Condominium, is not maintained by the Owner thereof, mow, care for, maintain and remove rubbish from such Lot or Unit and do anything else the Board deems necessary or desirable to keep such Lot or Unit neat in appearance and in good order.

(2) Maintain, repair and replace all structures, improvements and facilities which are part of the Joint Common Areas including all interior plumbing common to All Units in the buildings.

(3) Pay all taxes and assessments levied or assessed against the Joint Common Areas, District Facilities and any other property owned or leased by the Association or by the Condominium Sub-Group.

(4) Keep true and correct records of account in accordance with generally accepted accounting principles, and have available for inspection by any Owner at reasonable times during regular business hours, books which specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

(5) Upon reasonable request and during reasonable business hours, make available for inspection by any Owner or Association Member the books, records and financial statements of the Board, together with current copies, as amended from time to time, of the Townhome Declaration, the Condominium Declaration, the Articles of Incorporation and Bylaws of the Association and the Design Standards (hereinafter defined).

(6) Perform any other duties required of the Board as provided elsewhere in this Declaration or in the Condominium Declaration.

(7) All of the above-mentioned services shall be provided by the Board's employees or agents and paid for through annual member assessments charged to the Owners payable periodically as determined by the Developer or the Board.

3.4 **Managing Agent; Contracts and Services.** Any powers, rights and duties of the Board may be delegated to a managing agent under a management contract, **PROVIDED** that no such delegation shall relieve the Board from its obligation to perform any such delegated duty. Any contract entered into by the Board for professional management or other services shall not exceed a term of one year, which term may be renewed by agreement of the parties for successive one-year periods, and any such contract shall be terminable by the Board for cause on thirty (30) days' written notice and shall permit termination by either party upon 90 days' notice with or without cause and without payment of any termination fee. Subject to the foregoing limitations, the Board is specifically authorized to enter into a management contract with a management company owned in whole or in part by Developer or any affiliate of Developer, **PROVIDED** that the term of such contract shall not extend beyond the Turnover Date (hereinafter defined). The Board shall also have the right, in its discretion, to enter into such contracts and transactions with others, including Developer and its affiliates, as the Board may deem necessary or desirable for the purposes herein set forth, and shall have the right to engage and dismiss such agents and employees as will enable the Board to adequately and properly carry out the provisions of this Declaration and the Association's Articles of Incorporation and

Bylaws. No such contract or transaction shall be invalidated or in any way affected by the fact that one or more Trustees of the Board may be employed by or otherwise associated with Developer or its affiliates, provided the fact of such interest is disclosed or known to the other directors acting upon such contract or transaction, and provided further that the contract or transaction is on commercially reasonable terms. Any such interested Trustee may be counted in determining the existence of a quorum at the meeting of the Board at which such contract or transaction is authorized, and such interested Trustee may vote thereon with the same force and effect as if he were not interested.

3.5 **Control of Board by Developer.** Notwithstanding anything in this Article 3 or elsewhere in this Declaration to the contrary, Developer shall have and maintain absolute and exclusive control of the Board, the District Facilities Committee and the Design Review Committee, including appointment and removal in Developer's sole discretion of all Trustees and all members of the District Facilities Committee and the Design Review Committee, until the date (the "**Turnover Date**") which is the earlier of (a) the expiration of 10 years from the date of recording of this Declaration, or (b) the effective date designated by Developer in a notice to the members of the Association stating that Developer relinquishes control. Until the Turnover Date, Developer will be entitled to cast all votes with respect to the election and removal of all Trustees, all members of the District Facilities Committee and all members of the Design Review Committee and with respect to any other matter requiring the vote or approval of members of the Board, either Sub-Board, the Association, either Sub-Group, the District Facilities Committee or the Design Review Committee as set forth herein or in the Association's Articles of Incorporation or Bylaws. Non-members and non-owners may be elected to the Board to provide expertise or skills that may be desirable.

ARTICLE 4

DISTRICT FACILITIES COMMITTEE

4.1 **Purpose.** The Board may form a committee, the District Facilities Committee to oversee and manage the maintenance, assessments, activities and decisions associated with the District Facilities (the "**District Facilities Committee**"). The District Facilities Committee shall be composed of five members, and shall represent both the Townhome Unit Owners and the Condominium Unit Owners. The number of members which represent the Townhome Unit Owners and the number of members which represent the Condominium Unit Owners shall be determined based on each Sub Group's Proportional Representation as described in Section 3.1; but in any event each respective group shall at all times have at least one representative District Facilities Committee member. The number of District Facilities Committee members shall only be changed upon both Townhome Sub-Group Approval and Condominium Sub-Group approval.

4.2 Representatives.

(a) Both the Townhome Sub-Board and the Condominium Sub-Board shall elect its respective District Facilities Committee members in accordance with the terms set forth below.

(b) If the Sub-Boards fail to elect representatives to the District Facilities Committee or if there are any vacancies on the District Facilities Committee, such positions shall default to each Sub-Group's respective Board of Trustees members.

(c) The members which shall represent the Townhome Sub-Group as provided herein ("**Townhome Representatives**") shall be elected by the Townhome Sub-Board at a meeting of the Board. The Townhome Representatives shall serve for a two year term. Notwithstanding the foregoing, the Townhome Sub-Board by the vote of all Townhome Trustees exercising not less than a majority of the voting power of all Townhome Trustees, may, from time to time, remove and replace the Townhome Representative with or without cause.

(d) The members which shall represent the Condominium Sub-Group as provided herein ("**Condominium Representatives**") shall be elected by the Condominium Sub-Board at a meeting of the Board. The Condominium Representatives shall serve for a two year term. Notwithstanding the foregoing, the Condominium Sub-Board by the vote of all Condominium Trustees exercising not less than a majority of the voting power of all Condominium Trustees, may, from time to time, replace the Condominium Representative with or without cause.

4.3 **Action by the District Facilities Committee.** Subject to Section 4.5 below, all maintenance, assessments, activities and decisions associated with the District Facilities, including the annual budget for the District Facilities, shall be governed by the District Facilities Committee. No action of the District Facilities Committee shall be binding on the Association unless such action was approved by a majority (i.e., greater than sixty percent (60%)) of the District Facilities Committee members.

4.4 **Maintenance and Obligations.**

(a) The District Facilities Committee shall be responsible for ensuring that the District Facilities are properly maintained and insured.

(b) The Committee shall have the authority to do or cause to be done by the Board of Trustees or by a Managing Agent the following:

(1) Clean streets, gutters, catch basins, sidewalks, storm sewers and drainage facilities.

(2) Collect and dispose of all rubbish and garbage, including all rubbish and garbage form both the Townhome Units and the Condominium Units, on a weekly basis, unless such service is provided by a separate entity.

(3) Care for, spray, trim, protect and replant trees, flowers and shrubbery which are part of the District Facilities.

(4) Install and maintain lawn sprinkler systems on all portions of the District Facilities where lawn care is needed.

(5) Provide lawn care, including mowing, spraying, replanting grass and replacing sod on all District Facilities where lawn care is needed, except that such service shall not include the care of gardens planted by a Townhome Owner or Condominium Owner or the care of areas which have been enclosed by a Townhome Owner or Condominium Owner with hedging or otherwise made inaccessible for maintenance purposes.

(6) Plow and clear snow (not ice), in excess of two inches from all sidewalks and streets which are part of the District Facilities, as soon as reasonably possible after the snowfall has ceased.

(7) Maintain, repair and replace all structures, improvements and facilities which are part of the District Facilities or any trails or paths or other amenities or easements for which such rights are reserved upon any Lots and maintain all drainage and retention facilities which are part of the District Facilities, including maintenance and repair to the sewer service lines from each building, including both Townhome and Condominium buildings, to the main Sewer Line.

(8) Ensure that the Board pays all taxes and assessments levied or assessed against the District Facilities and include the amount of such taxes and assessments as part of the District Facilities Assessments.

(9) Keep true and correct records of account in accordance with generally accepted accounting principles, and have available for inspection by any Owner at reasonable times during regular business hours, books which specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

(10) Upon reasonable request and during reasonable business hours, make available for inspection by any Association member, Townhome Owner or Condominium Owner the books, records and financial statements of the Committee, together with current copies, as amended from time to time, of the Townhome Declaration and the Condominium Declaration.

(11) The committee may designate the Board and it's employees or agents, or a Managing Agent to provide the above-mentioned services which shall be paid for through District Facility Assessments as described herein.

4.5 District Facilities Assessments.

(a) Each owner of any unit in the Master District, Townhome Unit or Condominium Unit, by acceptance of a deed therefor or possession thereof (whether or not it shall be so expressed in any such deed or other conveyance), is deemed personally and individually to covenant and agree to pay to the Board the assessments levied by the District Facilities Committee.

(b) The annual costs and expenses associated with improving, maintaining and insuring the District Facilities shall be levied against All Unit Owners in the Master District, both Townhome Unit Owners and Condominium Unit Owners alike. The District Facilities Committee will submit totals for the District Facilities Assessments to the Board to be levied as

assessments. Every Owner shall contribute their respective "Pro Rata Share" (as defined below) of the District Facilities Assessment including, but without limitation, the cost of (i) maintaining insurance on the District Facilities as required by Article 9 of the Townhome Declaration, (ii) performing all District Facilities Maintenance and Duties (including, without limitation, the cost of all personnel necessary to perform such maintenance) and (iii) the cost of any betterments. The "Pro Rata Share" of each owner shall be determined by dividing the District Facilities Assessment for any given year by the total number of Assessable Units (both Townhome and Condominium Units) at the time the District Facilities Assessment is levied, with such District Facilities Assessment being prorated for partial years (e.g., if a particular unit is assessable for 40% of a year, the owner of such Assessable Unit shall only pay 40% of an owner's Pro Rata Share of such District Facilities Assessment for such year).

(c) The provisions of Section 7.7 and section 7.8 of the Townhome Declaration shall apply to all District Facilities Assessments and should be read to apply to Condominium Unit Owners where applicable.

4.6 **Special Assessments.** Any special assessment against the District Facilities approved by the District Facilities Committee and not included in the annual District Facilities Assessment (a "**District Facilities Special Assessment**") shall be levied against the owners in the same manner as the District Facilities Assessment. The Pro Rata Share of each owner for any District Facilities Special Assessment shall be determined by dividing the amount of the District Facilities Special Assessment by the total number of Assessable Units (both Townhome and Condominium Units) at the time the District Facilities Special Assessment is levied.

4.7 **No Waiver or Offset.** No Owner shall be exempt from payment of their Pro Rata Share of the District Facilities Assessment or any District Facilities Special Assessment for any reason, including waiver of the use or enjoyment of the District Facilities or nonuse thereof. The District Facilities Assessment and any District Facilities Special Assessments shall be payable in the amounts specified in the notices thereof given by the District Facilities Committee to the Board, and there shall be no offsets against such amounts for any reason.

4.8 **Actions Requiring Approval.**

(a) Any action of the District Facilities Committee which results in a District Facilities Special Assessment greater than fifty percent (50%) of the District Facilities Assessment for that year shall require approval of the Special Assessment by the majority of the Association members.

(b) The annual budget for the District Facilities shall not increase by more than ten percent (10%) of the prior year assessments without approval of such increase by the majority of the Association members.

ARTICLE 5

SHARED FACILITIES COMMITTEE

5.1 **Agreement.**

(a) The members of the Association by acceptance of a deed to a Unit, either Townhome Unit or Condominium Unit, agree to adopt, comply with and pay all assessments as required under the Shared Facilities Agreement dated October 12, 2006 and recorded October 17 at Book 200610 and page 005621 at the Johnson County Recorder of Deeds.

(b) Pursuant to the Shared Facilities Agreement entered into between Declarant and The Reserve Homeowners Association, a Kansas not-for-profit corporation ("**Reserve Homeowners Association**"), the Reserve Homeowners Association has granted to all Unit owners, their tenants, successors and assigns, a non-exclusive, perpetual right, privilege and easement to use and enjoy the Shared Facilities for the respective intended purposes for which the Shared Facilities are constructed, designed and intended, subject to any reasonable rules and regulations of general application which the Shared Facilities Committee may adopt from time to time.

(c) A portion of the purchase price for each Unit, both Townhome Unit and Condominium Unit, will be allocated for the rights to use the Shared Facilities and each Owner will be subject to assessments levied by the Shared Facilities Committee for the operation and maintenance of the Shared Facilities.

(d) No Owner of an Assessable Unit shall be exempt from payment of the Shared Facilities Assessment or any Special Assessment related thereto for any reason, including waiver of the use of enjoyment of the Shared Facilities or nonuse thereof.

5.2 **Representatives.**

(a) Pursuant to the Shared Facilities Agreement, there shall be formed a committee under the Reserve Homeowners Association (the "**Shared Facilities Committee**") to oversee and manage the maintenance, assessments, activities and decisions associated with the Shared Facilities. The Shared Facilities Committee shall initially consist of five (5) members (the "**Shared Facilities Committee Members**"), the composition shall reflect the proportionate representation on the Executive Board as provided in 3.1 above, which shall represent the Association.

(b) The Board shall meet and elect the two (2) Shared Facilities Committee Members, one member to be elected by the Townhome Sub-Board and one member to be elected by Condominium Sub-Board, which shall represent the Association as provided in the Shared Facilities Agreement at such meeting. Both Shared Facilities Committee Members elected by the Board, shall serve for two year terms. Notwithstanding the foregoing, each respective Sub-Board by the vote of all Trustees exercising not less than a majority of the voting power of the Sub-Board, may, from time to time, remove and replace their respective elected Shared Facilities Committee Member with or without cause.

ARTICLE 6

INDEMNIFICATION

6.1 **Indemnification.**

(a) To the fullest extent permitted by law, the Association shall indemnify each member of the Design Review Committee (hereinafter defined), each member of the District Facilities Committee, each member of the Shared Facilities Committee (hereinafter all preceding committee members to be referred to as "**Committee Members**"), each officer and director of the Association, each Board Trustee and Developer (to the extent a claim may be brought against Developer by reason of its appointment or removal of or control over any of such other persons) (each, an "**Indemnified Party**") against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association or Committee Member, provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

(b) To the fullest extent permitted by law, neither Developer nor any officer or director of the Association nor any Board Trustee nor any Committee Member shall be liable to any Owner or any Association member or anyone claiming by, through or under any Owner or Association member for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, inaction, omission, error or negligence taken or made in good faith and which Developer, Board Trustee, such officer, director or Committee Member reasonably believed to be within the scope of his or its duties.

ARTICLE 7

ASSESSMENTS

7.1 **Creation of Lien and Personal Obligation.** Each Owner of an Assessable Unit, both Townhome Units and Condominium Units, by acceptance of the deed or other conveyance thereof or interest therein, is deemed to covenant and agree to pay all assessments, annual and special, provided for in this Declaration. Each such assessment, together with interest thereon as hereinafter provided, filing fees, attorneys' fees, court costs and other costs of collection thereof (such interest and all of such fees and costs being herein sometimes collectively called "**Costs**"), shall be a continuing lien upon the Assessable Unit, both Townhome Units and Condominium Units, against which such assessment is made, which lien shall be enforceable as provided in Section 7.7. Each assessment, together with all Costs relating thereto, shall also be the personal obligation of the Owner of the Assessable Unit against which the assessment is made. Such personal obligation shall not pass to an Owner's successor unless expressly assumed by the successor. If an Owner consists of more than one person and/or entity, the obligations of the Owner for the payment of such assessments and Costs shall be joint and several.

7.2 **Purpose of Assessments.** The assessments levied by the Board shall be used to provide funds to enable the Board to exercise the powers and perform the duties herein set forth, including (by way of example only and not by way of limitation) (a) the costs assessed by the District Facilities Committee for maintenance, management, operation, repair and replacement of

the District Facilities; (b) the costs assessed by the Shared Facilities Committee for maintenance, management, operation, repair and replacement of the Shared Facilities; (c) the costs of management and administration of the Board, such as compensation paid by the Board to managers, accountants, attorneys, other professionals and employees; (d) the costs of utilities (including water, electricity, gas and sewer services provided directly to the Master District and not individually metered or billed by the service providers directly to All Units and other services provided by the Board which generally benefit and enhance the value and desirability of the Master District; (e) the costs of any insurance maintained by the Board; (f) reasonable reserves for major items, contingencies, replacements and other proper purposes as deemed appropriate by the Board; (g) the costs of bonding any persons handling funds of the Board; (h) taxes, assessments and other governmental impositions paid by the Board; and (i) the costs of any other items or services to be provided or performed by the Board as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws or in furtherance of the purposes of the Board.

7.3 Method of Allocation.

(a) The Board shall allocate to All Units that individual's Pro Rata Share. The "Pro Rata Share" of each Unit Owner shall be determined by dividing the Assessments for any given year by the total number of All Assessable Units (both Townhome Units and Condominium Units) at the time the Assessment is levied, with such Assessment being prorated for partial years (e.g., if a particular unit is assessable for 40% of a year, the owner of such Assessable Unit, Townhome Unit or Condominium Unit, shall only pay 40% of an owner's Pro Rata Share of such Assessment for such year). For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(b) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to All Unit owners.

(c) So long as the Declarant is in control of the Association, Declarant shall not have a duty to retain any amount of reserve funds nor shall Declarant use any part of the reserve funds retained to defray Declarant's expenses, reserve contributions or construction costs, or to make up any budget deficits, and shall maintain any reserve funds in a segregated account and transfer the same to the Association at or prior to the time Unit owners other than Declarant control the Association. Each Unit's share of the reserve funds shall be collected either at the time the sale of the Unit is closed or when control of the Association is vested in Owners other than Declarant, whichever is earlier, without prejudice to Declarant's right to recover its contribution from purchasers of Units from Declarant subsequent to such vesting of control.

(d) Each Assessable Unit as platted, shall be subject to assessment in accordance with the method provided above. In the event of an expansion to create more Units then the cost allocation shall be adjusted accordingly.

7.4 Annual Assessments.

(a) All Assessable Units shall be subject to an annual assessment which may be levied by the Board from year to year and shall be paid to the Board annually in advance by the Owner of such Assessable Unit. If the amount collected from annual assessments for any year exceeds the Board's costs and expenses for such year, such excess shall be taken into consideration in preparing the budget and determining the annual assessments to be levied for the following year. If the amount collected from annual assessments for any year is inadequate to meet the Board's actual or projected costs and expenses for such year, special assessments may be levied at any one or more times during such year as provided in Section 7.5 hereof. A portion of the annual assessments for each year shall be allocated to reserves to provide required funds for repair or replacement of major items, replacements, and for other contingencies and proper purposes. The responsibility of the Board shall be only to provide for such reserves as the Board in good faith deems reasonable, and neither Developer nor the Board shall have any liability to any Owner, or member of the Association if such reserves are inadequate.

(b) Upon the closing of the sale of each Completed Unit by Declarant, Declarant shall collect from the buyer and cause to be paid over to the Association, for deposit into its reserve funds, a sum equal to the initiation fee ("Initiation Fee") described below. The Initiation Fee amount also applies each time title to a Unit is transferred to a new owner and is due the date which is 1 month after the recording of the deed whereby a Owner conveys title to the Assessable Unit to the new owner. The Initiation fee shall consist of:

(1) A one time fee equal to two months of the then monthly assessment in effect for All Completed Units subject to assessment; and

(2) A one time fee attributable to the up front cost of initiating the insurance policy for first time occupants of each unit, such fee is currently equal to \$450 but shall be subject to adjustment by the Board; and

(3) The pro-rated balance for the current year. Such current year portion of the Annual Assessment shall be prorated on a per diem basis in accordance with the number of days remaining in such year from and after the date the assessment is due.

(c) The annual assessment with respect to each Assessable Unit for each subsequent year shall be due as of the first day of such year.

(d) Failure of the Board to levy annual assessments for any one year shall in no way affect the right of the Board to do so for any subsequent year.

(e) The Board shall give at least 30 days advance notice to each Owner of an Assessable Unit whose address is then listed with the Association of the amount of the annual assessment on such Assessable Unit and the date on which such assessment is due.

7.5 Special Assessments.

The Board may at any time or times during any year, if necessary in its discretion to enable the Board to carry out the purposes herein set forth, or if required by the District

Facilities Committee, levy against each Assessable Unit (from and after the date on which such Assessable Unit first becomes subject to annual assessments as provided in Section 7.4) a special assessment over and above the annual assessment for such year to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to occupants) shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to ten percent (10%) or more of that fiscal year's budget, without the prior consent of All Unit Owners, exercising not less than seventy-five percent (75%) of the voting power of All Unit Owners.

(a) At the direction of the District Facilities Committee, a Special Assessment may be levied on the Units benefited by a Joint Driveway to cover any costs incurred for maintaining the same.

(b) The Board may levy a Special Assessment to cover any costs of maintaining a Lot, a Unit or improvements thereon which are the responsibility of the Owner and were incurred by the Board because of the failure of the Owner to perform such obligations and that assessment shall be levied only against that Unit and that Unit Owner.

(c) The Board shall give at least 30 days' advance notice to each Owner of an Assessable Unit whose address is then listed with the Association of the amount of each special assessment and the date on which such assessment is due.

7.6 No Waiver or Offset. No Owner of an Assessable Unit shall be exempt from payment of the assessments and costs imposed under this Declaration by waiver of the use or enjoyment of the Joint Common Areas, District Facilities, Shared Facilities or by nonuse thereof or by abandonment of such Owner's Assessable Unit. All assessments, annual and special, shall be payable in the amounts specified in the notices thereof given by the Board, and there shall be no offsets against such amounts for any reason.

7.7 Delinquency; Enforcement of Liens.

(a) If any Owner of an Assessable Unit fails to pay any assessment, annual or special, on or before the 30th day following the date on which such assessment is due, a late fee as determined by the Board of no less than \$25 shall be applied and all such late assessments shall bear interest from the date due until the date paid at the rate of interest as determined by the Board, limited to the highest lawful rate.

(b) Each assessment, annual or special, shall become delinquent on the 30th day after the date on which such assessment is due, and payment of the assessment and Costs (including interest) may then be enforced as a lien on such Assessable Unit in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Board to bring suits to enforce such liens before the expiration thereof. The Board may, whenever any assessment is delinquent, file a certificate of nonpayment of assessments with the Register of Deeds, and for each certificate so filed the Association shall be entitled to collect from the Owner of the property described therein a fee of \$150.00 which shall

be added to the amount of the delinquent assessments and the lien on the Unit, plus any filing fees of the Register of Deeds which fee shall be part of the Costs included in the lien.

(c) Such liens shall continue for a period of five years from the date of delinquency and no longer, unless, within such time, suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment therein.

(d) Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, the benefit of any redemption, homestead or exemption laws of the State of Kansas now or hereafter in effect.

(e) Any lien which arises against any Assessable Unit by reason of the failure or refusal of an Owner to make timely payment of any assessment shall be subordinate to the lien of a prior recorded first mortgage on such Assessable Unit acquired in good faith and for value securing the payment of a loan made by a bank, savings and loan association or other institutional lender ("**First Mortgage**"), except for any unpaid assessments and Costs which accrue from and after the date on which the holder of such First Mortgage ("**First Mortgagee**") (1) comes into possession of the Assessable Unit, or (2) acquires title to the Assessable Unit, whichever occurs first. If any lien for unpaid assessments and Costs which accrued prior to the date a First Mortgagee comes into possession of or acquires title to the Assessable Unit has not been extinguished by the process whereby the First Mortgagee came into possession or acquired title, the First Mortgagee shall not be liable for unpaid assessments or Costs arising or accruing prior to such date and, upon request by the First Mortgagee to the Board, the Board shall release such lien of record; **PROVIDED, HOWEVER**, that (1) any unpaid assessments and Costs which are so extinguished shall continue to be the personal obligation of the delinquent Owner, and the Board may seek to collect them from such Owner even after such Owner is no longer the owner of the Unit or a member of the Association; and (2) if the Owner against whom the original assessment was made is the purchaser of or redeems the Assessable Unit, the lien shall continue in effect and may be enforced for the assessments and Costs which were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Any such unpaid assessments and Costs which are not collected within a reasonable time may be reallocated by the Board among all other Owners of Assessable Units, irrespective of whether collection proceedings have been commenced or are then pending against the defaulting Owner.

7.8 **Certificate of Nonpayment.** Upon request, any party acquiring title to or any interest in an Assessable Unit shall be entitled to a certificate from the Board setting forth whether the assessments on a specified Unit have been paid, the amount of due but unpaid assessments and Costs pertaining to such Assessable Unit if any, and such party shall not be liable for nor shall any lien attach to the Assessable Unit in excess of, the amount set forth in the certificate, except for assessments and Costs which arise or accrue after the date of the certificate.

7.9 **Pledge of Assessment Rights as Security.** The Board may pledge the right to exercise its assessment powers as security for any obligation of the Board; **PROVIDED, HOWEVER**, that after the Turnover Date any such pledge shall require the prior affirmative vote of a majority of all members of the Association.

ARTICLE 8

EASEMENTS AND LICENSES

8.1 **Reservation by Developer; Grant to the Board and District Facilities Committee.** Developer hereby reserves to itself and its successors and assigns and grants to Board of Trustees, its officers, agents, and employees and to the District Facilities Committee, its members, agents and employees the right, privilege and easement to enter upon the Common Areas and the District Facilities to the extent necessary for the purposes of (a) constructing, maintaining, relocating, repairing and replacing on the District Facilities decorative walls, underground sprinkler systems, lighting, sidewalks, signs, landscaping features, recreational facilities and other improvements which Developer or the District Facilities Committee reasonably believes will enhance the beauty and function of the District Facilities or the District; (b) planting, replanting, maintaining and replacing grass and landscaping on the District Facilities; (c) the installation and maintenance of utilities and drainage facilities and (d) doing all other things which Developer, the Board or the District Facilities Committee shall be obligated to do as set forth in this Declaration or shall deem desirable for the neat and attractive appearance and beautification of the Common Areas and District Facilities. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The foregoing rights, privileges and easements of Developer shall automatically terminate as of the Turnover Date; **PROVIDED, HOWEVER,** that Developer may at any time and from time to time relinquish any or all of the foregoing rights, privileges or easements by recording an instrument to such effect with the Register of Deeds. The foregoing rights, privileges and easements of the Board, its officers, agents and employees and the District Facilities Committee, its members, agents and employees shall be binding on all Townhome Owners hereunder and their successors and assigns and shall be perpetual, run with the land and shall survive termination of this Declaration so long as there are Units in existence and occupied.

8.2 **Grant to Owners.** Developer hereby grants to each Townhome Owner the non-exclusive, perpetual right, privilege and easement to use the District Facilities for the respective purposes for which the District Facilities are constructed, designed and intended, subject, however, to all of the provisions of this Declaration, the provisions of the Association's Articles of Incorporation and Bylaws and any reasonable rules and regulations of general application within the District which the Board or the District Facilities Committee may adopt from time to time, which right, privilege and easement shall survive the termination of this Declaration so long as there are Units in existence and occupied.

8.3 **Grant to Condominium Owners and Occupants.** Developer hereby grants to each to all Condominium Owners and all Condominium Occupants a non-exclusive, perpetual right, privilege and easement to use the District Facilities for the respective purposes for which the District Facilities are constructed, designed and intended, subject, however, to all of the provisions of this Declaration, the provisions of the Association's Articles of Incorporation and Bylaws and any reasonable rules and regulations of general application within the District which the District Facilities Committee may adopt from time to time, which right, privilege and

easement shall survive the termination of this Declaration so long as there are Units in existence and occupied.

8.4 **Shared Facilities Easement.**

(a) Pursuant to the Shared Facilities Agreement entered into between Declarant and The Reserve Homeowners Association (Homeowners Association), a Kansas not-for-profit corporation, the Homeowners Association has granted to All Unit Owners, their tenants, successors and assigns, a non-exclusive, perpetual right, privilege and easement to use and enjoy the Shared Facilities for the respective intended purposes for which the Shared Facilities are constructed, designed and intended, subject to any reasonable rules and regulations of general application which the Shared Facilities Committee may adopt from time to time.

(b) A portion of the purchase price for each Unit, both Townhome Units and Condominium Units, will be allocated for the rights to use the Shared Facilities and All Unit Owners will be subject to assessments levied by the Shared Facilities Committee for the operation and maintenance of the Shared Facilities.

8.5 **License to Enter.** During the term of this Declaration and thereafter as long as any of the easements created by this Declaration survive, Developer, the Association, the Board, the District Facilities Committee and their respective partners, officers, employees, agents and contractors shall have a temporary license to enter upon and use such portions of any Lot or Unit as may be reasonably necessary to permit Developer, the Association, the Board or the District Facilities Committee to exercise or perform all or any of the rights, powers and obligations reserved, given to or imposed upon Developer, the Association, the Board or the District Facilities Committee by the provisions of this Declaration; **PROVIDED, HOWEVER**, that Developer's rights under this Section 8.5 shall automatically terminate as of the Turnover Date. Each Unit Owner shall provide the Board with a key to the Unit, which shall be used by the Board only in the case of an emergency when notice cannot be given and permission cannot be reasonably obtained from the Unit Owner.

8.6 **Performance of Work; Indemnification.** Developer, the Association, the Board and the District Facilities Committee in entering upon any Lot, Unit or District Facilities in the exercise of the rights, privileges and easements granted to them by this Article 8, shall (a) perform all work with due diligence; (b) take all safety measures reasonably required to protect property; (c) perform the work so as to avoid, to the extent practical, interference with the use or quiet enjoyment of the Unit; (d) after the work is completed, restore the Unit to the condition existing prior to the work (to the extent consistent with the performance of such work); and (e) indemnify and hold harmless the Owner of the Unit from and against all claims for bodily injury or property damage which may be asserted against such Owner by reason of the exercise of rights by Developer, the Association, the Board or the District Facilities Association under this Article 8.

ARTICLE 9

INSURANCE; DAMAGE TO IMPROVEMENTS

9.1 **Fire and Extended Coverage Insurance.** The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Joint Common Areas, District Facilities, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Master District, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent All Unit Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:

- (a) provide coverage for built-in or installed improvements, fixtures and equipment that are part of All Units, and shall provide for coverage of interior walls, windows and doors and the frames, sashes, jambs and hardware thereof, even though these improvements may be parts of All Units;
- (b) have (i) an agreed amount and inflation guard endorsement or replacement cost, when that can be obtained, (ii) building ordinance or law endorsement, if any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, providing for contingent liability from the operation of building laws, demolition costs, and increased costs of construction; and, (iii) when applicable, a boiler and machinery coverage endorsement, which provides that the insurer's minimum liability per accident at least equals the lesser of two million dollars or the insurable value of the building or buildings housing the boiler or machinery (or a separate stand-alone boiler and machinery coverage policy);
- (c) provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first mortgage;
- (d) be written in the name of the Board for the use and benefit of the respective Sub-Group which owns the insured property, or its authorized representative, including any insurance trustee with whom the Association or Board has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners or the Sub-Group which owns the insured property;
- (e) contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which (i) must provide that the carrier shall notify the named insured and each first mortgagee named in the

mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and (ii) must be endorsed to provide that any loss shall be paid to the Board (or its insurance trustee), as a trustee for the Unit Owner of the respective Sub-Group owning the insured property and each such Unit Owner's mortgagee, and, unless otherwise prohibited by law or a nationally recognized institutional first mortgage holder, insurer, or guarantor, to the holders of first mortgages on Units;

(f) have a deductible amount no greater than the lesser of ten thousand dollars or one percent of the policy face amount;

(g) All costs related to insurance for the District Facilities and the District Facilities Committee shall be included in the District Facilities Assessments; all other insurance costs to be paid for by the Association, as a common expense;

(h) contain a waiver of subrogation of rights by the carrier as to the Board, its officers and Trustees, and all Unit Owners;

(i) provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners who are not under the control of either Association or the Board; and

(j) be primary, even if a Unit Owner has other insurance that covers the same loss.

9.2 **Liability Insurance.** The Board shall obtain and maintain, at the Board's cost and as a common expense, a commercial policy of general liability insurance covering all of the Joint Common Areas, District Facilities, public ways and any other areas under the Board's supervision, and Units, if any, owned by the Association or the Condominium Sub-Group, even if leased to others, insuring the Board, the Trustees, and All Unit Owners and occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) one million dollars, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, or other Unit Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Board is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Board and to each holder of a first mortgage on a Unit.

9.3 **Fidelity Coverage.** Unless such coverage is provided by a Management Company, the Board shall obtain and maintain, at the Board's cost and as a common expense, fidelity insurance providing coverage for the Board against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Board. The fidelity insurance policy must name the Board as the named insured and shall be written in an amount sufficient to provide protection,

which is in no event less than the greater of (a) an amount equal to the Board's reserve funds plus three months' assessments on all Units, and (b) the maximum amount that will be in the custody of the Board, or its managing agent at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten days' prior written notice to the Board, and any insurance trustee, and any servicer on behalf of any holder, guarantor or insurer of any mortgage on a Unit who requires such rights. Any management agent who handles funds of the Board shall maintain a policy of fidelity insurance providing coverage no less than that required of the Board, which bond or insurance policy names the Board as an additional obligee.

9.4 **Insurance Carrier.** Each policy of insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Kansas which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

9.5 **Other Association Insurance.** In addition, the Board may purchase and maintain, at the Board's cost and as a common expense, contractual liability insurance, Trustees' and Officers liability insurance, and such other insurance as the Board may determine.

9.6 **Insurance Representative: Power of Attorney.** There may be named, under any policy obtained by the Board, as an insured on behalf of the Board, its authorized representative, including any trustee with whom the Board may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. All Unit Owners, by acceptance of a deed to a Unit, irrevocably appoint the Board or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Board, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for the Unit Owners of the respective Sub-Group owning the insured property and their first mortgage holders, as their interests may appear. This power is for the benefit of each and All Unit Owners, and their respective first mortgage holders, the Board and the Association, runs with the land, and is coupled with an interest.

9.7 **Unit Owners' Insurance.** Any Townhome Unit Owner, Condominium Unit Owner or occupant may carry such insurance in addition to that provided by the Board pursuant hereto as that Owner or occupant may determine, subject to the provisions hereof, and provided that no Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Board unless it provides a waiver of subrogation as to any items included within insurance carried by the Board. In the event any Townhome Unit Owner, Condominium Unit Owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Board to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Townhome Unit Owner, Condominium Unit Owner or occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Owner or occupant, provided that if the Board obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments". All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Board, its officers and Trustees, and all other Townhome Unit Owners, Condominium Unit Owners and occupants.

9.8 **Sufficient Insurance.** In the event the improvements forming a part of the Common Areas, District Facilities or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Board and the insurance proceeds shall be used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction the Unit Owners and eligible mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration or the Condominium Declaration, shall elect to terminate the Condominium or Townhome, then such repair, restoration or reconstruction shall not be undertaken.

9.9 **Insufficient Insurance.** In the event the improvements forming a part of the Townhome Common Areas or any portion thereof, constituting a the 4 plex residential building, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Townhome Unit Owners and eligible mortgagees of the damaged 4 plex residential building, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Board shall make repairs, restoration or reconstruction of the Townhome Common Areas constituting a 4 plex residential building so damaged or destroyed at the expense (to the extent not covered by insurance) of all Townhome Unit Owners owning a Unit in the damaged residential building in proportion to their respective undivided interests in the subject 4 plex residential building. Should any Townhome Unit Owner refuse or fail after reasonable notice to pay that Townhome Unit Owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Board shall be assessed against the Unit of such Townhome Unit Owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided

for the nonpayment of assessments. *(similar provision provided for Condominium Units in Condominium Declaration)*

9.10 **Lender Requirements.** Notwithstanding the foregoing provisions of this Article, the Board shall at all times maintain hazard insurance, liability insurance, and fidelity insurance coverage conforming with the requirements then governing the making of a first mortgage loan, or the purchase, guaranty, or insurance of first mortgages, by national institutional lenders, guarantors or insurers of first mortgage loans on Townhome and Condominium units.

ARTICLE 10

DAMAGE; RESTORATION REHABILITATION AND RENEWAL; TERMINATION

10.1 **Restoration of Substantial Damage or Destruction.** In the event of substantial damage to or destruction of all Units in a residential building, or the taking of one or more Units in any condemnation or eminent domain proceedings, the Board shall promptly restore or replace the same, unless an election is made not to do so, as hereinafter provided or as provided in the Condominium Declaration.

10.2 **Election Not to Restore: Termination.** The Board may, with the consent of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power of Unit Owners owning a Unit in the damaged 4 plex residential building, and the consent of eligible mortgagees hereinafter provided, both given within sixty (60) days after damage or destruction, determine not to repair or restore the damage or destruction, and to terminate that particular 4 plex residential building. In any such an event, all of the property consisting of the damaged 4 plex residential building shall be sold as upon partition. In the event of such an election not to repair or restore substantial damage or destruction or reconstruct such 4 plex residential building, the net proceeds of insurance paid by reason of such damage or destruction, or the net amount of any award or proceeds of settlement arising from such proceedings, together with the proceeds received from the sale as upon partition, or in the case of an election otherwise to terminate the 4 plex residential building, the net proceeds from the partition sale, shall be distributed among the Owners of the Units located in the damaged 4 plex residential building and the holders of their respective first mortgage liens, (as their interests may appear), in the proportions of their undivided interests in the damaged 4 plex residential building. *(similar provision provided for Condominium Units in Condominium Declaration)*

10.3 Rehabilitation and Renewal.

The Board, with the consent of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power of Unit Owners owning a Unit in each 4 plex residential building, and the consent of eligible mortgagees hereinafter provided, may determine that a particular 4 plex residential building is obsolete in whole or in part and elect to have the same renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall first be paid from each affected Units Allocated Reserve Fund, and any deficiencies to be allocated to the respective Unit Owners in the proportions of

their undivided interests in the subject 4 plex residential building. *(similar provision provided for Condominium Units in Condominium Declaration)*

ARTICLE 11

CONDEMNATION

11.1 **Standing.** Except as hereinafter provided, the Board, or its designated representative, or authorized successor, as trustee, shall represent the Townhome Unit Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Townhome Property, and shall have the sole and exclusive right to settle losses with the condemning authority and to receive the award or proceeds of settlement, for the use and benefit of the Townhome Unit Owners and their mortgagees as their interests may appear. Notwithstanding the foregoing, in the event that a Townhome Unit Owner may lawfully separately pursue and realize upon a claim for incidental and consequential losses or damage to that Townhome Unit Owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential losses, that Townhome Unit Owner may, at his, her or its election, separately pursue such claim, provided, that the pursuing of the same, or the realization of an award thereof, neither jeopardizes, in any way, an action by the Board to recoup the losses incurred by it, or any other Townhome Unit Owner, or the direct loss with respect to the Unit itself, or with regard to the usability thereof, nor diminishes any award for any such loss.

11.2 **Use of Proceeds.** The award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings, after reduction by the costs, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged or taken improvements on the remaining Property in accordance with the current plans and specifications, or in accordance with any new plans and specifications thereof approved by Townhome Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Townhome Unit Owners for each affected 4 plex residential building, and the consent of eligible mortgagees hereinafter provided.

11.3 **Insufficient Proceeds.** If the award or proceeds are insufficient for such purpose, excess cost shall be paid by the Board with each affected Unit's Allocated Reserve Funds and, to the extent each Unit's Allocated Reserve Funds are insufficient therefor, such excess cost shall be a common expense and assessed among the Units of each affected 4 plex residential building in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and disbursed to the Unit Owners for each affected 4 plex residential building, and their first mortgagees, as their interests may appear, in proportion to the relative undivided interests of the affected 4 plex residential building.

11.4 **Non-Restorable Unit.** Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any 4 plex residential building could not reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any

other Unit Owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner of the affected 4 plex residential building whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such non-restorable Unit or Units, and the Owners thereof, shall be immediately and automatically divested of any interest in the Townhome, the Townhome property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Townhome, the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

11.5 Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Board, or its designated representative, as his, her or its attorney-in-fact to represent that Unit Owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit Owner, each holder of a first mortgage on a Unit, the Association, and the real estate to which it is applicable, runs with land, is coupled with an interest, and is irrevocable.

ARTICLE 12

ADDITIONAL COVENANTS

12.1 Maintenance by Owners. Except as otherwise expressly provided in this Declaration, Each Unit Owner shall repair and maintain the Unit or Units, the Limited Common Areas pertaining to each Unit, and all components thereof, owned by that Unit Owner, and perform cleaning and housekeeping with respect to Common Areas appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit Owner shall include repair, maintenance and replacement of all windows, glass, screens and doors, including the frames, glass, sashes and jambs, and the hardware thereof, trellises, decks, balconies, Unit driveways, the floor of each Unit's garage, the patio area and any walkways or sidewalks servicing only one particular Unit (i.e. the walkway to the main Unit entrance). In the event a Unit Owner shall fail to make a repair or perform maintenance required Areas is caused by the negligent or intentional act of any Unit Owner or occupant, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to may perform a claim under any warranty, express, implied, or imposed by law, the Association whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owned by that Unit Owner and on

that Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

12.2 **Board Responsibilities.** The Board to the extent and at such times as it determines to allocate funds therefor, may maintain, repair and replace all improvements constituting a part of the Common Areas and including but not limited to utility facilities serving more than one Unit, utility lines in the Joint Common Areas, walkways, retaining walls, and the structural portions and exterior portions of all buildings and improvements which are a part of the Common Areas and that do not constitute part of a Unit or the Limited Common Areas, provided that the Board shall not be responsible for the cleaning and housekeeping of Limited Common Areas, or components thereof. The Board may maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements on of the Joint Common Areas, only to the extent that such Common Areas do not constitute part of a Unit or Limited Common Areas. So long as the Declarant is in control of the Association, Declarant shall not have a duty to retain any amount of reserve funds. Except to the extent, if any, that a loss is covered by insurance maintained by the Board, the Association shall not have responsibility to repair or maintain any Unit, or component thereof, or personal property within a Unit.

12.3 **Taxes and Other Encumbrances.** Each Owner shall promptly pay, before delinquency, all taxes, assessments, liens, encumbrances or charges of every kind ("**Liens**") levied against or imposed upon such Owner or such Owner's Unit which may, as a matter of law, be or become a lien on any part of the Common Areas or District Facilities which lien is prior to the easements granted and reserved in this Declaration. In the event of a breach of this covenant, the Association shall have, in addition to all other rights or remedies, the right (but not the obligation) to obtain the discharge of any such Lien by payment or otherwise, and collect from such Owner all costs and expenses incurred by the Association in connection therewith, including attorneys' fees.

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

12.5 **Water.**

(a) There is one water meter for each residential building, therefor each Unit will be assessed a flat monthly fee for water to be charged as a Special Assessment.

(b) The Board may at any time or times during any year, if necessary in its discretion to enable the Board to carry out the purposes herein set forth, or if required by the District Facilities Committee, cause individual Unit water meters to be installed in any number of the residential buildings. Upon such determination, each Unit in the affected residential building will be assessed an installation fee of \$50.00 and such Unit will thereafter be separately metered and charged for water.

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ARTICLE 13

ARCHITECTURAL AND LANDSCAPE CONTROL

13.1 Design Review Committee.

(a) The Association shall create a Design Review Committee consisting of at least five members, and shall represent both the Townhome Unit Owners and the Condominium Unit Owners. The number of members which represent the Townhome Unit Owners and the number of members which represent the Condominium Unit Owners shall be determined based on each Sub Group's Proportional Representation as described in Section 3.1; but in any event each respective group shall at all times have at least one Design Review Committee member. The members shall be appointed (and removed) from time to time: (a) by Developer until the Turnover Date (as defined in Section 3.5), and (b) by the respective Sub-Boards, after the Turnover Date.

(1) The members which shall represent the Townhome Sub-Group as provided herein ("**Townhome Members**") shall be elected by the Townhome Sub-Board at a meeting of the Board. The Townhome Members shall serve for a two year term. Notwithstanding the foregoing, the Townhome Sub-Board by the vote of all Townhome Trustees exercising not less than a majority of the voting power of all Townhome Trustees, may, from time to time, remove and replace the Townhome Member with or without cause.

(2) The members which shall represent the Condominium Sub-Group as provided herein ("**Condominium Members**") shall be elected by the Condominium Sub-Board at a meeting of the Board. The Condominium Members shall serve for a two year term. Notwithstanding the foregoing, the Condominium Sub-Board by the vote of all Condominium Trustees exercising not less than a majority of the voting power of all Condominium Trustees, may, from time to time, replace the Condominium Members with or without cause.

(b) If the Sub-Boards fail to elect representatives to the Design Review Committee or if there are any vacancies on the Design Review Committee, such positions shall default to each Sub-Group's respective Board of Trustees members. Neither the members of the Committee, nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant.

(c) The Design Review Committee shall have control over completed homes in the Master District, including all Assessable Townhome Units and all Assessable Condominium Units at or after the recording of this Declaration. Notwithstanding the foregoing, exclusive control over approval of new homes to be constructed after the date of filing this Declaration shall be vested solely in Developer, until such time as the homes are sold and the Townhome Owners thereof become subject to the Townhome Declaration or the Condominium Owners become subject to the Condominium Declaration (which adopts these provisions) at which time said homes will then become subject to the Design Review Committee.

(d) The Design Review Committee shall have the right to approve or disapprove, as to quality, appearance and harmony of external design or location in relation to

surrounding structures and topography and the harmonious development of the Master District as a whole, all homes, structures or apparatuses (permanent or temporary), landscaping, irrigation systems, fences, screening fences, recreational facilities (pools, tennis courts and the like), walls, signs, exterior lights, driveways and walkways (and all alterations, changes and additions to any of the foregoing), and all changes in or alteration of grade (collectively, "**Improvements**"), which may be erected, placed, maintained or undertaken in or upon any part of the Master District.

13.2 **Design Standards.** In order to achieve uniformity and coordination within the Master District and carry out the purposes of the Design Review Committee, building design standards ("**Design Standards**") shall be established by the Design Review Committee which comply with all City requirements. The current Design Standards are dated July 28, 2008. The Design Standards may, from time to time, be amended, supplemented or repealed by the Design Review Committee with the approval of Developer prior to the Turnover Date and thereafter the approval of the Board. All Improvements within the Master District shall conform to the Design Standards and comply with all City regulations and requirements.

13.3 **Residence Design.** Without limiting the requirement that Improvements conform to the Design Standards, the following shall apply:

(a) **General Design.** Developer retains sole control over the initial design and development of the Master District. Notwithstanding the foregoing, the design of each residence shall be subject to the approval of the Design Review Committee and, without limiting the foregoing, shall comply with the following criteria: (1) appropriateness of form, color and materials to design style; (2) relationship of window to wall and wall to total form (well-designed massing); (3) appropriateness of detailing to form, style and massing; and (4) proportions of roofs being consistent with the proposed architectural style.

(b) **Exterior Materials and Colors.** All exterior materials and the color of all exterior materials (including paint) shall be approved by the Design Review Committee. Residences shall be faced on all sides with quality materials (such as brick, vinyl siding, wood trim, vinyl windows, stone, simulated stone or stucco) as approved by the Design Review Committee. Exposed standard concrete block, prefabricated metal buildings, simulated brick, and batt and board are not permitted. All residences shall have vinyl windows. Exposed foundations shall be painted and those exceeding 12 inches shall be covered with the same quality face material as the residence. Class A roofs shall meet or exceed the City's requirements and specifications regarding weight and color. All roofs shall be composed of asphalt or composition shingles.

(c) **Construction, Location and Size Limitations.**

(1) No exterior alterations of any existing building shall be made without the prior approval of the Design Review Committee. No additional windows, platforms, etc. which may invade the privacy of adjacent dwellings are permitted.

(2) Any building erected to replace an existing residential building containing Townhome Units or Condominium Units shall be of new construction, be of

comparable structure type, size, design and construction to that replaced, and shall contain a like number of Townhome Units or Condominium Units of comparable size to the Townhome Units or Condominium Units in the building replaced.

(3) Once commenced, construction of Improvements shall be diligently pursued to completion, and Improvements may not be left in a partly finished condition for more than 30 days without written approval from the Design Review Committee.

(4) Subject to the provisions of Section 9.1 of this Declaration and Article 16 of the Condominium Declaration, residences destroyed by fire or other casualty or portion thereof shall be repaired or demolished and removed from the lot and new construction begun within six months after the date of such destruction, unless otherwise approved by the Board, and thereafter such construction shall be performed with due diligence through completion.

(5) No residence shall be more than three stories in height, except that split-level construction shall be permitted.

(6) All residences and other Improvements shall be located on each lot as approved by the Design Review Committee and in full compliance with any setback lines or restrictions shown on the Plat. The location shall be determined by Developer's engineer's site plan to set grades and drainage.

(7) No window or wall air conditioning or heating units will be permitted.

(8) No screening of a patio or other recreational area will be installed without the written approval of the Design Review Committee.

(9) Fences are not encouraged because they fragment the landscape of the Master District. The only fences which will be allowed are those required by the City and privacy fences erected between adjoining Units. Any privacy fences approved must be vinyl fences not to exceed six feet in height. Privacy fences are to provide a barrier between units for privacy purposes only and are shall not be permitted to completely enclose any portion of property. (Thus, while a Unit with adjoining Units on each side may construct a privacy fence as a barrier between each adjoining neighbors the back section must remain unfenced and open.) All fences in the Master District shall be one color, as determined by the Design Review Committee. All fencing and walls (including the composition and location thereof) shall be subject to the approval of the Design Review Committee. No chain link or wire fencing shall be permitted.

(10) All residences shall have external driveways consisting of properly constructed concrete surfaces.

(11) All lots, regardless of building location thereon, shall be fully sodded provided, however, no sodding shall be required where, in the opinion of the Design Review Committee, soil, lighting or topographical conditions would make sodding impractical or

unreasonably expensive, and provided further that no duty to clear any tract of trees, bushes, shrubs or natural growths which are kept reasonably attractive shall be implied.

(12) Notwithstanding the foregoing, all landscaping shall be done consistent with the landscaping plan established by Developer, which may include size, shape, quality, species and location anywhere upon the lot and shall be subject to approval of the Design Review Committee.

(13) No Townhome Owner or Condominium Owner shall be guaranteed or entitled to any specific view from either the Lot, improvements on such Lot, Townhome Unit, or Condominium Unit.

13.4 **Construction Period Requirements.** The Design Review Committee shall have the right to establish measures to be observed during the period of construction on a Townhome Unit or Condominium Unit in order to minimize disturbance to adjacent sites, and all parties involved in such construction shall be required to observe such measures.

13.5 **Review Process.** Signed plan approval by the Design Review Committee is required prior to the undertaking of any site improvements, construction or installation, including clearing, grading, paving, signs, structures, landscaping, building additions or alterations. Submission to the City for building permits or site plan approval should not be made until final plans have been approved by the Design Review Committee. All submissions to the Design Review Committee are to be made within the time periods to be established from time to time by the Design Review Committee. The initial review of each submission by the Design Review Committee will be carried out within 30 working days from the date of each submission, and notification of recommendations, approval or disapproval will be provided in writing to the Townhome Owner or Condominium Owner at that time.

13.6 **Interpretation; Waiver.** The Design Review Committee's interest in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. 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 Master District 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.

13.7 **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 to architectural landscape designers or engineering 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 establishment of the Design Review Committee and Design Standards shall not be construed as impairing the obligation of any Townhome Owner or Condominium Owner to maintain or repair his Townhome Unit or Condominium Unit as may otherwise be

specified in this Declaration and the Townhome Association's Bylaws or the Condominium Declaration or the Association Bylaws.

(c) No residence, fence, wall or other structure or other improvement of any type shall be commenced, erected or maintained within the Master District, nor shall there be any addition to or change to the exterior of any residence or other structure or improvement upon a Lot, Townhome Unit or Condominium Unit, or the landscaping, grading or drainage thereof, including the painting (other than painting with the same color of paint as previously existed) 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: (1) insufficient information to adequately evaluate the design or its intent; (2) poor overall design quality; (3) incompatible design elements; (4) inappropriate design concept or design treatment; or (5) a design found to have an adverse effect on the character of the Master District or its residents. In recognition of the fact that the overall impact of Improvements on Any Lot or to Any Unit involves issues of taste and judgment which cannot be completely reduced to Design Standards, the Design Review Committee and the Board shall also have the right, in its sole discretion, (a) to reject plans and specifications conforming to the Design Standards if the Committee or the Board believes that the overall aesthetic impact of any proposed improvement, addition, alteration or change is detrimental to the Master District or (b) to bring any necessary action to enjoin or stop the violation of the Design Standards.

(d) 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 Developer nor any partner thereof, the Design Review Committee nor any member thereof, nor the Board nor any member, officer or director thereof, assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither Developer nor any partner thereof, the Design Review Committee nor any member thereof, nor the Board nor any member thereof, officer or director thereof, shall be liable to Any Owner or other person or entity for any damage, loss, cost or prejudice suffered or claimed on account of (1) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (2) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (3) the development or manner of development of any property within the Master District. 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 or regulations, including zoning ordinances and building codes.

(e) Any member or authorized consultant of the Design Review Committee, Developer or its representatives, or any authorized officer, director, employee or agent of the Board may at any reasonable time, after reasonable notice to All Owners, enter upon any Townhome Unit or Condominium Unit without being deemed guilty of trespass in order to inspect improvements constructed or being constructed on such Townhome Unit or Condominium 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, the Design Standards, and the Townhome Declaration or the Condominium Declaration where

applicable. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed 60 days) after a request therefor from any Townhome Owner or Condominium Owner as to his Townhome Unit or Condominium Unit, which request shall contain an affirmative statement by such Townhome Owner or Condominium Owner of his good faith belief that he is in compliance with the approved plans and specifications, the Design Standards and the other provisions hereof. If such inspection reveals that the Improvements located on such Townhome Unit or Condominium Unit have been completed in compliance with the requirements of the Design Review Committee, the Design Standards and the other provisions hereof, the Design Review Committee shall provide to such Townhome Owner or Condominium Owner a Certificate of such approval in recordable form which, when recorded with the Register of Deeds, shall be conclusive evidence of compliance with the requirements of the Design Review Committee and the Design Standards as to the Improvements described in such recorded notice, but as to such Improvements only.

(f) The Design Review Committee may promulgate such rules and regulations as it deems to be appropriate and as are not in conflict with the Townhome Declaration or the Condominium Declaration in order to enforce compliance with the Design Standards. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE 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.**

13.8 **Public Approvals.** All pertinent requirements of public agencies shall be complied with in the development of each Townhome Unit or Condominium Unit thereon, and all plans must be approved by the appropriate departments of the City. Without limiting the foregoing, the design of any fence crossing a drainage area must be reviewed and approved by the Director of Public Works of the City to assure that the fence does not restrict water flow. Each Townhome Owner or Condominium Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive as to land use restrictions, site development standards, landscape requirements or other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of each Townhome Unit or Condominium Unit will be made by the City.

ARTICLE 14

USE AND OCCUPANCY RESTRICTIONS

14.1 Residential Use.

(a) Except as otherwise specifically provided in this Declaration, no Unit either Townhome Unit or Condominium Unit, or the improvements located thereon shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incident thereto, provided, however, that no Unit or the improvements thereon may be used as a rooming house, group home, commercial foster home,

fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not a violation of these restrictions; (ii) the Board may establish rules and regulations for the use of a portion of a home by the owner thereof in furtherance of his or her occupation; provided, however, that such use shall not otherwise result in the violation of these restrictions or permit advertising (on or off site) or visitation by customers or clients at the home; and provided that the use of any lot for day care (child or adult) purposes is prohibited, (iii) it shall be the right of Developer to maintain, until the Turnover Date, one or more Units as sales or rental models and offices, and for storage and maintenance purposes and for such other portions of the Master District as Developer may deem necessary, including without limitation a temporary sales office or the maintenance of a construction trailer, such facilities and activities as in the sole opinion of Developer may be reasonably required, convenient or incidental to the construction or sale of lots or the District property and (iv) one or more lots may be maintained for the use of the Association and/or the Board in fulfilling its responsibilities.

(b) No trailer, basement, tent, shack, garage, barn or outbuilding shall at any time be used as a residence, temporarily or permanently, nor shall any residence of temporary character be permitted.

(c) No dwelling or residence shall be occupied until fully completed, except for exterior painting, sod, landscaping and minor trim details, and such dwelling or residence must be fully completed within twelve (12) months after the first earth excavation is started.

(d) Each dwelling unit contains a storm shelter as required by the Lenexa design standards. The storm shelters are located in the garage area of each Unit. The storm shelters are reinforced spaces provided as a safe place for Unit occupants to go during severe weather and should be used only for such purpose. Using the storm shelters as additional storage or placing items inside the storm shelters is not advised and is done so at the Unit Owner's risk as doing so will frustrate the purpose of the storm shelters by rendering the storm shelters inaccessible during extreme weather.

14.2 District Facility Uses. The District Facilities shall be used by All Owners, and their occupants, agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the Units. Unless expressly provided otherwise herein, no District Facilities shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of any Unit Owners and occupants.

14.3 Common Areas Uses. The Townhome Common Areas (except the Limited Common Areas) shall be used in common by Townhome Unit owners and occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of

access, ingress to, egress from, use, occupancy and enjoyment of Townhome Units. Unless expressly provided otherwise herein, no Townhome Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Townhome Unit owners and occupants.

14.4 **Signs.** No permanent or temporary sign of any kind shall be displayed to public view from any Unit without the prior approval of the Board or the Design Review Committee, except for: (a) on the Common Areas and District Facilities, signs regarding and regulating the use of the Common Areas and District Facilities; (b) on the interior side of the window of a Unit, one professionally prepared sign not in not exceeding five square feet in total area and not exceeding three feet in height, advertising the Unit for sale; (c) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law, and (d) on the Common Areas, District Facilities and model Units, signs advertising the sale of Units by the Declarant during the period of its initial sale of Units. For purposes hereof, a "sign" includes any mark, symbol, word(s), drawing or other drawing intended to communicate to a viewer.

14.5 **Flagpoles.** No permanent or temporary flagpole of any kind shall be erected, placed or displayed on any Unit.

14.6 **Animals.** Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas or District Facilities. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained on a Unit, provided that: (i) Owners comply with all of the City's animal ordinances; (ii) all pets are licensed with the City; (iii) the pets shall be house pets only and not permitted unattended on the District Facilities; (iv) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to prohibit pets entirely, to place limitations on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets. No animals shall be kept, bred or raised within the District for commercial purposes. All such domestic pets may be registered with the Board and proper proof of immunization shall be furnished to the Board at least annually.

14.7 **Nuisances.** No Owner shall permit or suffer anything to be done or kept about or within such Owner's Unit or on or about any other part of the District which obstructs or interferes with the rights of other Owners, tenants or occupants or causes them annoyance by unreasonable noises or otherwise, nor will any Owner commit or permit any nuisance or illegal act about or within any part of the Master District. Each Owner shall comply with the rules and regulations adopted by the Board and the requirements of all health authorities and other governmental authorities having jurisdiction over the District.

14.8 **Boats and Motor Vehicles.** No boats, trailers, buses, trucks, motor homes, mobile homes, campers, camper-trailers, trailers, tractors, trucks or other recreational vehicles shall be parked at the curb for more than twenty-four (24) hours at any one time or habitually. No boats, trailers, buses, trucks, motor homes, mobile homes, campers, camper-trailers, trailers, tractors, trucks or other recreational vehicles shall be stored in or upon any Unit for more than twenty-four (24) hours, except within an enclosed garage. Automobiles must be parked (including temporary guest parking) or stored within an enclosed garage or on the Unit's

driveway. No vehicle shall be repaired (except for minor repairs) or rebuilt on any Unit. No autos, buses, boats, trucks, race cars, wrecked cars, modified stock cars, trailers, or vehicles that are not in operating condition, are not registered or whose presence might create an unsightly appearance or create a nuisance or be a hazard to life or health shall be allowed to be parked or left on any lot or at the curb. The Board 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 permitted by law.

14.9 **Lights.** No spotlights, floodlights or other lighting shall be placed or used on any Unit in a manner which illuminates or otherwise unreasonably interferes with the enjoyment of neighboring Units. All exterior lighting shall have a concealed energy source and a white color. Golden, yellow, blue or reddish colors are not permitted except for holiday decorative lighting during the period from November 15 through January 15. Exterior lighting must not be mechanically attached to the building siding and the exterior lighting or installation thereof should in no way cause the building siding to be penetrated in any way. No exterior lighting shall be installed or maintained on any Unit if the Design Review Committee objects thereto.

14.10 **Antennas.** No exterior radio, television or other antenna of any kind, including satellite dishes or other device for the reception or transmission of radio, microwave or similar signals shall be placed or maintained on the exterior of any building constituting Limited Common Areas or Common Areas.

14.11 **Trash and Garbage.** No garbage or trash shall be kept, maintained or contained on any Unit so as to be visible from another Unit. No incinerator shall be kept or maintained in any Unit. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot or Unit or upon any undeveloped portion of the subdivision. Trash shall be placed in such designated locations and containers as may be established from time to time by the District Facilities Committee. On trash day, trash shall be placed outside in a trash container that has a lid on it in a place as to be determined by the District Facilities Committee.

14.12 **Mining.** No part of the District shall be used in any manner to explore for or remove any water, oil or other hydrocarbons, minerals or earth substances of any kind.

14.13 **Basketball Goals.** No basketball goals of any kind shall be allowed to be placed or maintained on the exterior of any building, the Limited Common Areas or the Common Areas.

14.14 **Clothes Drying.** No part of any Lot, Limited Common Area or Common Area shall be used as a drying or hanging area for laundry of any kind; all clothes drying shall be done inside the Unit.

14.15 **Drainage.** No Owner shall erect, construct, maintain or permit any fence or other improvement or obstruction which would interfere with or alter drainage of the land, or within any area designated by Developer or the Board as a drainage easement, or within any area which has been intentionally contoured to facilitate drainage; **PROVIDED** that, with the prior consent

of the City and the Design Review Committee, nonpermanent structures may be erected in those areas which contain only underground closed conduit storm drainage facilities.

14.16 **Outbuildings.** No detached building (such as a storage building, storage container or playhouse) or other detached structure shall be erected or placed on any Lot or Unit. This provision shall not apply to improvements and structures to be erected on the Common Areas and District Facilities by or at the direction of the Board or any committee thereof.

14.17 **Above-Ground Swimming Pools.** No above-ground swimming pool shall be placed or maintained on any Lot.

14.18 **Storage Tanks.** No exterior storage tank of any kind, whether for fuel or any other substance, shall be placed or maintained on any Lot or in any Unit.

14.19 **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 in the garage.

14.20 **Solar Panels.** No solar panels shall be erected on any Unit.

14.21 **Firearms.** No hunting or use of firearms or archery equipment shall be permitted in the subdivision.

14.22 **Lawn Ornamentation.** No lawn ornaments of any kind which are visible from any street shall be placed on any Lot or Unit. Exterior sculptures, fountains and other similar décor shall be subject to the prior written approval of the Design Review Committee.

14.23 **Subdivision; Combined Units.** No Unit shall be divided or subdivided except by Developer as approved by the City. If an Owner owns contiguous Units, they may be combined into a single homesite but only with the prior approval of the City and the Design Review Committee. Once two or more Units have been so combined, they shall remain combined, and the Owner thereof shall not be permitted at any time to lease, sell or otherwise transfer or convey less than all of such combined Units.

14.24 **Safety Conditions; Repairs.** Without limiting the other provisions of this Article 14, each Owner shall maintain and keep such Owner's Unit at all times in good repair and in a clean, safe and sanitary condition, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their Units. Subject to the provisions of Section 10.3, all improvements on a Unit shall be repaired and restored by the Owner thereof with due diligence.

14.25 **Renting and Leasing.** No Unit or part thereof shall be used for transient or hotel purposes, which is defined as: (i) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomer or boarder of a portion of a Unit only, where the different living spaces have been separated by new construction, so that a single Unit is effectively transformed into two separate units. For all Units rented in a customary manner, any lease agreement shall be in writing, shall have an initial term of not less than one year, shall provide that the lease shall be subject in all respects to the provisions hereof, and to

the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Organizational Documents and lawful rules and regulations shall be a default under the lease. Prior to the commencement of the term of a lease the Unit owner shall notify the Board, in writing, the name or names of the tenant and the time during which the lease term shall be in effect. There shall be no more separate living units on the property than the local laws allow.

14.26 Waiver or Modification; Additional Restrictions. The Board or the Design Review Committee may waive or modify any one or more of the foregoing restrictions; **PROVIDED, HOWEVER,** that (subject to the rights of amendment set forth in Article 18) the restrictions contained in Sections 14.1 (Residential Use), 14.7 (Nuisances), 14.8 (Boats and Motor Vehicles), 14.11 (Trash and Garbage), 14.12 (Mining), 14.15 (Drainage), 14.16 (Outbuildings) and 14.24 (Safety Conditions; Repairs) may not be waived or modified. The Board may also further restrict or regulate the use and occupancy of the District and the Units by reasonable rules and regulations of general application within the District adopted from time to time.

14.27 Compliance with City Requirements. Notwithstanding any provision of this Article 14 or any other provision of this Declaration to the contrary, all property within the District shall be used only in compliance with City Requirements. In every case in which any provision of this Declaration is at variance with City Requirements, the more restrictive provision shall govern and control.

14.28 Enforcement. The Board or its authorized agents may enter any Unit on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Unit. Such expenses, and such fines as may be imposed by the rules and regulations adopted by the Board, shall be deemed a special assessment secured by a lien upon such Unit enforceable in accordance with the provisions of Section 7.7. All remedies described in Article 18 hereof and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, tenant, occupant or other party of any provision of this Article 14.

14.29 Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically hereinbefore mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit Owners as a whole, and the Association, and to protect and preserve the nature of the development. A copy of all rules and regulations shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

ARTICLE 15

MORTGAGES

15.1 Defaults. Notwithstanding anything in this Declaration to the contrary, no breach or default of any term, provision, covenant, condition, restriction or easement contained in this Declaration shall defeat or adversely affect the lien of any mortgage on any property in the

District; however, except as herein specifically provided otherwise, each and all of said terms, provisions, covenants, conditions, restrictions and easements shall be binding upon and effective against any Owner who acquires its title or interest by foreclosure, deed in lieu of foreclosure or the exercise of any other right or remedy under a mortgage, including the obligation to pay all assessments and Costs arising or accruing thereafter, in the same manner as any other Owner. An Owner who leases his Unit to another party shall be responsible for assuring compliance by the tenant with all of the provisions of this Declaration, the Association's Articles of Incorporation, Bylaws and the rules and regulations adopted by the Board, all as amended and supplemented from time to time, and such Owner shall be jointly and severally responsible with the tenant for any violations by the tenant.

15.2 **Enforcement After Foreclosure Sale.** Without limiting any other rights or remedies herein provided or otherwise available at law or equity, an action to abate any default or breach of any of the terms, provisions, covenants, conditions, restrictions or easements contained in this Declaration may be brought against a purchaser who has acquired title to or any interest in a Unit through foreclosure of a mortgage and the subsequent sale of the Unit (or through any equivalent proceeding), and against the successors in interest of such purchaser, even though the default or breach existed prior to the purchaser's acquisition of title to or interest in the Unit.

15.3 **Exercise of Owner's Rights.** During the pendency of any proceeding to foreclose a mortgage (including any period of redemption), the mortgagee, or a receiver appointed in any such action, may (but need not), if and to the extent permitted by such mortgage or by the other documents evidencing or securing the loan secured by such mortgage, exercise any or all of the rights and privileges of the Owner under this Declaration, including the right (subject to the provisions of Section 2.2) to vote as a member of the Association in the place and stead of the Owner.

ARTICLE 16

CHANGES IN DISTRICT

Notwithstanding anything in this Declaration to the contrary, Developer may at any time and from time to time prior to the Turnover Date, in its sole discretion, without the consent of any other Owner, Association member, Board or other party, (a) subdivide any Lot or Unit owned by Developer into two or more Lots or Units, (b) combine any two or more Lots or Units owned by Developer into a single Lot or Unit, (c) add to the District such land contiguous to any part of the land then included in the District as may be owned or approved for addition by Developer, or (d) dedicate portions of the District owned by Developer to any governmental or quasi-governmental body (including the City) if, in Developer's sole discretion, such dedication will benefit the District as a whole. Any such change, addition or dedication shall become effective upon the recording with the Register of Deeds of an amendment to this Declaration setting forth the same.

ARTICLE 17

RIGHTS OF DEVELOPER

The Developer shall have the ability to transfer any and all rights, power, or authority it has under this Declaration. Notwithstanding anything in this Declaration to the contrary, prior to the Turnover Date none of the restrictions contained in this Declaration shall prohibit or limit any act by Developer, its employees, agents or contractors or any other parties designated by Developer in connection with the construction, completion, sale or leasing of the Units or any other part of the District.

ARTICLE 18

REMEDIES

18.1 **General.** In the event of any breach or default by any Owner, occupant or other person or entity ("**Defaulting Party**") under this Declaration, the Association shall have all of the rights and remedies provided in this Declaration and otherwise available at law or equity, and may prosecute any action or other proceeding against the Defaulting Party for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided, or for the appointment of a receiver for the affected Unit, or for damages or specific performance, or for judgment for the payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the affected Unit or the solvency of the Defaulting Party. Any and all such rights and remedies may be exercised by the Association at any time and from time to time, cumulatively or otherwise.

18.2 **Expenses of Enforcement.** All expenses of the Townhome Sub-Group, the Board or any other person having rights of enforcement under this Declaration, in connection with any action or proceeding described in or permitted by this Article 18, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon as determined by the Board until paid, shall be charged to and assessed against the Defaulting Party and shall be deemed a special assessment against the Owner of the affected Unit with respect to which special assessment the Association shall have a lien as provided in Article 7.

18.3 **Right to Cure.** The Board and any manager or managing agent retained by the Board shall have the authority (but not the obligation) to correct any breach or default under this Declaration and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the rate of interest as set by the Board, shall be charged to and assessed against the Defaulting Party as a special assessment, with respect to which special assessment the Board shall have a lien as provided in Article 7.

18.4 **Acknowledgement of Agreement.** Developer has entered into an agreement with Wiley Enterprises, LLC whereby Developer has agreed to release, indemnify and hold harmless Wiley Enterprises, LLC for any action arising out of the construction of the residential buildings and any improvements within the District.

18.5 **Limitation on Developer's Liability.** Notwithstanding anything to the contrary in this Declaration, it is expressly agreed that neither Developer (including any assignee of Developer's interest hereunder) nor any partner of Developer (or any partner of any assignee of Developer) shall have any personal liability to the Association, the Board, Committee Member or to any Owner, tenant, occupant, Association member, Trustee or other party arising under, in connection with or resulting from (including resulting from any action or failure to act with respect to) this Declaration, the Association, the Board, the Design Review Committee, the District Facilities Committee, the Association's Articles of Incorporation or Bylaws, the Design Standards or the rules or regulations adopted by the Board, or for any action taken or not taken pursuant to authority granted to Developer herein or therein, except, (a) in the case of Developer (or its assignee), to the extent of Developer's interest in the District, and (b) in the case of a partner of Developer (or a partner of such assignee), to the extent of such partner's interest in Developer (or in such assignee); and in the event of a judgment against Developer (or any partner of Developer, or assignee of Developer, or partner of any such assignee), no execution or other action shall be sought or brought thereon against any other assets or be a lien upon any other assets of the judgment debtor.

ARTICLE 19

AMENDMENT AND TERMINATION

19.1 **Amendment by Association.** The Townhome Sub-Group shall have the right (subject to the provisions of Section 19.2 and to the restrictions on amendment set forth in Section 19.3) to amend this Declaration by a written instrument, signed and acknowledged by two-thirds of the Association members constituting the Townhome Sub-Group agreeing thereto, setting forth the entire amendment, which amendment shall become effective when duly adopted and recorded with the Register of Deeds. Any proposed amendment must be first approved by a majority of the Board of Trustees and then adopted by two-thirds of the members of the Association members constituting the Townhome Sub-Group and receive written approval of the Developer, if Developer at that time owns one or more lots or tracts. Amendments may be adopted by the members (a) at a meeting of the members by the affirmative vote of at least two-thirds of all Townhome Sub-Group members entitled to vote at such meeting, or (b) without a meeting if all members have been duly notified of the proposed amendment and if two-thirds of all Townhome Sub-Group members entitled to vote at such a meeting, if held, consent to the amendment. However, in addition to the above requirements any amendments affecting the Condominium Unit Owners or Condominium Sub-group in any way, including but not limited to amendments affecting: a) the District Facilities, b) the Design Standards, c) the Board of Trustees, or d) Assessments, must be first adopted by two-thirds of the members of the Association (including both the Townhome Sub-group and the Condominium Sub-group). Such amendments may be adopted by the members (a) at a meeting of all of the Association members by the affirmative vote of at least two-thirds of all Association members entitled to vote at such meeting, or (b) without a meeting if all Association members have been duly notified of the proposed amendment and if two-thirds of all Association members entitled to vote at such a meeting, if held, consent to the amendment.

19.2 **Amendment by Developer.** Notwithstanding any other provision of this Declaration to the contrary, as long Developer owns any Unit in fee simple, Developer shall have

the sole and exclusive right (subject to the restrictions on amendment set forth in Section 19.3) to amend this Declaration without the approval of the Townhome Sub-Group, the directors or members of the Association or the approval of any other Sub-Group, Owner or other party, by a written instrument setting forth the entire amendment, which shall become effective upon its recording with the Register of Deeds.

19.3 Restrictions on Amendment. Neither the Townhome Sub-Group nor Developer shall have the right to amend this Declaration without the prior consent of seventy-five percent (75%) of the Owners of the Units subject to this Declaration so as to change the size requirements for residences in paragraph 13.3(c)(2), the prohibition against certain types of fencing in the last sentence of paragraph (c)(9) of Section 13.3 or the provisions of, Section 14.8 (Boats and Motor Vehicles), Section 14.16 (Outbuildings) or the basic requirements of Building Design Approval, procedures and Design Standards under Article 13, but the specifics of Building Design Approval, procedures and Design Guidelines shall be subject to modification by the Design Review Committee and the Board.

19.4 Term and Termination. The covenants are to run with the land and shall be binding on all Owners within this subdivision and their grantees, heirs and assigns and all persons claiming under them. This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until July 28, 2028. Thereafter, unless two years prior to July 28, 2028, an instrument signed by at least two-thirds of all Townhome Sub-Group members then entitled to vote shall be recorded with the Register of Deeds directing the termination of this Declaration, this Declaration shall be automatically continued without any further notice for an additional period of 20 years and thereafter for successive periods of 20 years each; **PROVIDED**, that within two years prior to the expiration of any such 20-year period, this Declaration may be terminated as above provided in this Section. **PROVIDED HOWEVER**, this Declaration may be terminated at any time when an instrument signed by at least ninety percent (90%) of all Townhome Sub-Group members then entitled to vote shall be recorded with the Register of Deeds directing the termination of this Declaration. **PROVIDED FURTHER**, in addition to the above requirements any termination affecting the Condominium Unit Owners or Condominium Sub-group in any way, including but not limited to amendments affecting: a) the District Facilities, b) the Design Standards, c) the Board of Trustees, or d) Assessments, must be also be an instrument signed by at least ninety percent (90%) of the Condominium Sub-group.

ARTICLE 20

EXPANSION OPTION

20.1 Reservation of Expansion Option. Declarant expressly reserves the option to expand the Townhome Property but only within the limitations, and subject to the terms, set forth in this article.

20.2 Limitations on Option. Declarant has no limitations on its option to expand the Townhome Property except as provided in this article, or elsewhere in this Declaration, and

except as otherwise so expressly limited, has the sole right, power, and authority to expand the Townhome Property.

20.3 **Expansion Time** Declarant shall have the right to exercise or waive its option to expand at any time.

20.4 **Description.** Any of the property designated on the plat as "Additional Property" may be added to the Townhome Property in order to affect the expansion rights. At the Declarant's option, new residential structure(s) ("Additional Townhome Building(s)") may be built on the Additional Property and added to the Townhome Property by submission to the Townhome Act, and, together with any other improvements placed thereon and added hereto, is referred to herein as the "Additional Townhome Building(s)".

20.5 **Composition of Portions Added.** Neither all nor any portion of the Additional Townhome Building(s) must be added to the Townhome Property, nor, if any of the Additional Townhome Building(s) is added, shall it be required that a particular portion of the Additional Townhome Building(s) must be added, provided that portions added meet all other requirements set forth in this Article. The structure(s) must be constructed pursuant to all requirements set for the in this Declaration.

20.6 **Improvement Location Limitations.** There are no limitations or assurances as to the location of any improvements that may be made as part of the Additional Townhome Building(s).

20.7 **Maximum Number of Townhome Buildings.** The maximum total number of residential buildings that may be created as part of the Additional Townhome Building(s) and added to the Townhome Property is eighteen (18).

20.8 **Non-Residential Uses.** No Units may be created as part of the Additional Townhome Building(s) and added to the Townhome Property that are not restricted exclusively to residential use; which residential use includes the function of a garage that is allocated to a Unit or Units.

20.9 **Compatibility of Structures.** Any structure erected as part of the Additional Townhome Building(s) and added to the Townhome Property will be consistent and compatible with structures then on the Townhome Property in terms of structure type, scale, quality of construction, the principal materials to be used, and architectural style, and design. Comparable style and design shall be deemed to exist if the exterior appearance of the structures on the Additional Townhome Building(s) is compatible and harmonious with those then on the Townhome Property. Design shall not be deemed to be incompatible or not comparable because of changes in the number of dwelling units in a building, variances in setbacks or locations of structures in relation to other improvements, or minor changes in design or finish detail.

20.10 **Improvements Other than Structures.** If all or a portion of the Additional Townhome Building(s) is added to the Townhome Property, then any necessary drives, sidewalks, yard areas, or other improvements shall be constructed similar to those then on the Townhome Property.

20.11 **Limited Common Areas.** Declarant reserves the right with respect to all or any portion of the Additional Townhome Building(s) added to the Townhome Property to create Limited Common Areas therein of substantially the same type and size as those areas now so designated as such in the Townhome Property. The precise size and number of such newly created Limited Common Areas cannot be ascertained precisely, because those facts will depend on how large each portion added may be, the size and location of the buildings and other improvements on each portion, and other factors presently undetermined.

20.12 **Supplementary Drawings.** At such time as Declarant adds all or any portion of the Additional Townhome Building(s) to the Townhome Property it shall file Plats and Plans with respect to the Additional Townhome Building(s) as required by the Townhome Act.

20.13 **Procedures for Expansion.** All or any portion of the Additional Townhome Building(s) shall be added to the Townhome Property by the execution and filing for record by the Declarant, or its successor as owner of the portion added and as assignee of the right to expand the Townhome, in the manner provided by the Townhome Act, of an amendment to the Declaration that contains the information and plats and plans with respect to the Additional Townhome Building(s) and improvements thereon added required by the Townhome Act; Developer shall have the sole and exclusive right to make such amendment without the approval of the Townhome Sub-Group, the directors or members of the Association or the approval of any other Sub-Group, Owner or other party; provided, such expansion will not be effective until all improvements related thereto are substantially completed.

20.14 **Effects of Expansion.** Except as hereinafter specifically provided otherwise, upon the recording with the appropriate county recorder of an amendment to the Declaration adding all or any portion of the Additional Townhome Building(s) to the Townhome Property:

(a) the added portion shall thereafter be subject to and benefited by all of the terms and provisions hereof, to the same extent and with the same effect as if that added portion had been provided herein as constituting part of the Townhome Property, that is, the rights, easements, covenants, restrictions, and assessment plan set forth herein shall run with, bind, and benefit the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this Declaration apply to the Townhome Property;

(b) the owner or owners of a Unit or Units in one of the Additional Townhome Building(s) shall thereupon become Townhome Unit Owners, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other Townhome Unit Owners;

(c) those areas of the Additional Townhome Building(s) designated by Declarant as common areas shall be included in the definition of Common Area herein; and

(d) in all other respects, all of the provisions of this Declaration shall include and apply to such additional portions, and to the owners, mortgagees, and lessees thereof, with equal meaning and of like force and effect.

ARTICLE 21

GENERAL PROVISIONS

21.1 **Notices.** All notices, requests, consents, approvals and other communications required or permitted under this Declaration or the Association's Bylaws shall be in writing and shall be addressed to Developer, Reserve Townhomes at 910 E 7th Street Terrace, Lee's Summit, Missouri 64063, with a copy to Ford R. Nelson, Jr., Esq., 2345 Grand Boulevard, Suite 2000, Kansas City, Missouri 64108, to the Association at the address specified in the Association's Bylaws, and to each Owner and member at the last address shown for such Owner or member on the records of the Association. Any party may designate a different address or addresses for itself by giving written notice of its change of address to the Association. All such notices, requests, consents, approvals and other communications shall be deemed delivered when mailed by United States registered or certified mail, or when delivered in person with written acknowledgment of receipt thereof.

21.2 **Association Address.** The Board shall notify each member whose address is listed with the Association of the time and place of regular and special meetings of the members of the Association, Board meetings and the place where payments shall be made and any other business in connection with the Board may be transacted.

21.3 **Performance by Developer.** Prior to the incorporation of the Association, Developer shall have the right, at its option, to perform the duties of the Association and the Board, levy and collect the assessments and otherwise exercise the rights and powers herein given to the Board in the same manner as if such powers and duties were herein given directly to Developer. The Association nor the Board shall assume any of the rights or powers herein provided for without the consent of Developer and its relinquishment of such rights and powers; **PROVIDED, HOWEVER**, that nothing set forth herein shall be deemed to require Developer to perform or satisfy any duty or obligation to Owners or otherwise.

21.4 **Assignment by Developer.** Any and all of the rights, powers and easements of Developer herein contained may be assigned to any party which assumes the obligations of Developer pertaining to the particular rights, powers and easements assigned. Upon the recording with the Register of Deeds of a document of assignment whereby the assignee assumes and agrees to perform such obligations, such assignee shall, to the extent of such assignment, have the same rights, powers and easements and be subject to the same obligations with respect thereto as are herein given to and assumed by Developer, and Developer shall thereupon be released and relieved from all liability with respect to such obligations accruing from and after the date of recording of such assignment.

21.5 **Terminology.** The words "include," "includes" and "including" shall be deemed followed by the phrase "without limitation." The words "herein," "hereof," "hereunder" and similar terms shall refer to this Declaration unless the context requires otherwise. Whenever the context so requires, the neuter gender includes the masculine and/or feminine gender, and the singular number includes the plural and vice versa.

21.6 **Severability.** If any provision of this Declaration or the application thereof in any circumstance is held invalid, the validity of the remainder of this Declaration and of the application of such provision in other circumstances shall not be affected thereby.

21.7 **Rule Against Perpetuities.** If any of the easements, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the rule of law known as the "Rule Against Perpetuities," then such provision shall continue until but shall terminate as of the date which is 21 years after the death of the last survivor of the now living descendants of Jack Thomas Nelson.

ARTICLE 22

COVENANTS RUNNING WITH THE LAND

Each grantee of Developer and of any other Owner, by the acceptance of a deed, conveyance or other instrument evidencing or creating an interest or estate in any land within the District, and each person acquiring a membership in the Association, and the heirs, legal representatives, successors and assigns of each of the foregoing, accepts the same subject to the all of the terms, provisions, covenants, conditions, restrictions, reservations, easements and liens and subject to all of the rights, benefits and privileges of every kind which are granted, created, reserved or declared by this Declaration, and all impositions and obligations hereby imposed, all of which shall be deemed covenants running with the land and equitable servitudes, and shall bind every person and entity at any time having any interest or estate in any land within the District, and shall inure to the benefit of any such person or entity, as though the provisions of this Declaration were recited at length in each and every deed, conveyance or other instrument evidencing or creating such interest or estate.

IN WITNESS WHEREOF, Developer has executed this Declaration as of the date first above written.

RESERVE TOWNHOMES, LLC

By:

Name: Bill Wiley

Title: Manager

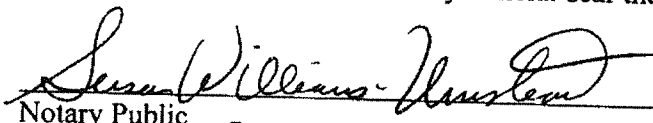
STATE OF MISSOURI)

) ss.

COUNTY OF JACKSON)

ON THIS 28th of July, 2008, before me, the undersigned, a Notary Public in and or said County and State, personally appeared Bill Wiley, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me duly sworn, said that he is the Manager of **Reserve Townhomes, LLC**, a Kansas limited liability company, and that he executed such instrument on behalf of said limited liability company by authority of its operating agreement, and said person acknowledged the execution of such instrument to be the act and deed of said limited liability company.

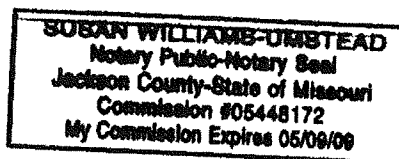
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.


Notary Public

Printed Name: Susan Williams-Urstead

My Commission Expires:

May 9, 2009



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SUBORDINATION OF MORTGAGE

This Subordination of Mortgage Witnesseth, that North American Savings Bank, a Federal Savings Bank, having an office at 12520 S 71 Highway, Grandview, MO 64030 ("Grantor/Owner"), as owner and holder of the mortgage evidencing the debt secured by the Mortgage executed by Reserve Townhomes, LLC, a Kansas limited liability company, having a mailing address at c/o Bill Wiley Homes, 910 SE 7th Terrace, Lee's Summit, Missouri 64063 ("Grantee/Borrower"), dated October 12, 2006 and recorded October 17, 2006 as Document No. 20061017-0005622 in Book 200610 at Page 005622, for value received does hereby subordinate the lien and effect of said Mortgage to the easements and building lines and lot lines as shown on the property therein described on the plat of ENCLAVE AT THE RESERVE TOWNHOMES recorded as Instrument Number/Book and Page 200807 007924 and the Amended and Restated Declaration of Enclave at the Reserve Townhomes recorded as Instrument/Book and Page _____. Provided, however, that this Subordination shall not prejudice the lien of said Mortgage on the remaining property herein described or subordinate said Mortgage to any other claim against the property.

IN WITNESS WHEREOF, these presents have been executed by said corporation, pursuant to due authority this 25th day of July, 2008.

NORTH AMERICAN SAVINGS BANK

By: _____

Name: _____

Title: _____

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Register of Deeds T20080028394
JO CO KS BK:200807 PG:008626

STATE OF MISSOURI

COUNTY OF JACKSON

)
) ss.
)

On this 25 day of July, 2008, before me, appeared Michael G. Anderson, to me personally known, who being by me duly sworn, did say that he is the Sr. Vice President of North American Savings Bank, a Federal Savings Bank, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said Michael G. Anderson acknowledged said instrument to be the free act and deed of said corporation.

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

My commission expires:

12-22-11

Notary Public

LAURA J. ROUSH
Notary Public - Notary Seal
STATE OF MISSOURI
JACKSON COUNTY
MY COMMISSION EXPIRES DEC. 22, 2011
Commission # 07434222

EXHIBIT A

Attached to and forming a part of
Amended and Restated Declaration of Restrictions
dated as of July 28, 2008,
executed by Reserve Townhomes, LLC

Legal Description of the Land

Tract G, H and I final plat of TOWNHOMES AT THE RESERVE, SECOND PLAT, a replat of parts of Tract A, B and D, TOWNHOMES AT THE RESERVE, FIRST PLAT, in the City of Lenexa, Johnson County, Kansas, including Units 2A, 2B, 2C, 2D, 32A, 32B, 32C, 32D, 33A, 33B, 33C, 33D, 34A, 34B, 34C and 34D.


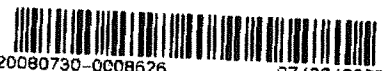

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EXHIBIT B

Attached to and forming a part of
Amended and Restated Declaration of Restrictions
dated as of July 28, 2008,
executed by Reserve Townhomes, LLC

**Declaration and Bylaws
Creating and Establishing a Plan for
Condominium Ownership
Under the Kansas Apartment Ownership Act
for
Enclave at the Reserve**


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