

**DECLARATION OF COVENANTS,
RESTRICTIONS, ASSESSMENTS AND EASEMENTS OF
THE RESERVE AT WAVERLY POINTE**

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**DECLARATION OF COVENANTS, RESTRICTIONS, ASSESSMENTS AND
EASEMENTS OF
THE RESERVE AT WAVERLY POINTE**

This is the Declaration of Covenants, Restrictions, Assessments and Easements of The Reserve at Waverly Pointe made as of the _____ day of December, 2007 pursuant to the provisions of K.S.A. §§ 58-3701 *et seq.* (the “Townhome Act”).

Recitals

A. Waverly 175, LLC, a Kansas limited liability company (the “Declarant”), is the owner in fee simple of all of the real property hereinafter described as the “Townhome Property” and the improvements thereon and appurtenances thereto.

B. The Declarant desires to create of this property a site of individually owned townhome units and commonly owned areas and facilities and, to these ends, to submit this property to the provisions of the Townhome Act.

Definitions

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

“Articles” means the articles of incorporation, filed with the Secretary of State of Kansas, incorporating a Kansas not for profit corporation to serve as the Association under this Declaration, as amended from time to time.

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

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

“Builder” means Design Homes, Inc., a Kansas corporation (or any other home builder to which Declarant transfers a Lot for the purpose of construction of a residential townhome unit thereon).

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

“City” means the City of Gardner, Kansas.

“Common Areas” means all of the Townhome Property, except each portion described in this Declaration as constituting a Unit or Units, and is that portion of the Townhome Property constituting “common areas and facilities” of the Townhome under the Townhome Act and

which are to be owned in fee simple by the Association, as further described in Article VI, Section 1.

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

“Declarant” means Waverly 175, LLC, a Kansas limited liability company, and its successors and assigns. For certain limited purposes under this Declaration (as set forth herein), Builder shall also be deemed to be the Declarant to the extent it owns a Lot and is constructing or has constructed a townhome residence thereon.

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

“Expandable Land” means other real property that may be added to the Townhome Property by the Declarant in accordance with this Declaration.

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

“Master Association” means Waverly Pointe Master Homes Association, Inc., which has been or will be formed as a Kansas non-profit corporation, for the purpose of serving as the master homes association for the overall area known as “Waverly Pointe”, which area includes the Townhome Property.

“Master Association Declaration” means the Waverly Pointe Master Homes Association Declaration, as recorded with the Recording Office in Book 200609 at Page 006913, as may be amended from time to time.

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

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

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

“Recording Office” means the Office of the Register of Deeds of Johnson County, Kansas, or other applicable governmental office in which documents related to ownership and encumbrance of real property in Johnson County, Kansas are filed of record in order to give public notice thereof.

“Special Unit Expenses” shall mean those costs and expenses specifically attributable to a specific Unit or Unit Owner for his or her own benefit, including, but not limited to, the costs of certain maintenance, repair and replacement of a specific Unit; fines or penalties imposed by the Board upon a specific Unit Owner from time to time; and other expenses and charges specified in this Declaration as being a “Special Unit Expense” of a specific Unit(s) or Unit Owner(s), but not of all Units and Unit Owners. For the sake of convenience, such costs may be billed to the Association but shall be payable by the applicable Unit Owner(s) by assessment.

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

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

“Townhome Property” means the tract(s) of land hereinafter described as being submitted to the Townhome Act and this Declaration, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto. Subject to Article XVII, the Townhome Property is legally described in Exhibit A attached hereto.

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

“Turnover Date” means the earlier of (i) the date as of which 95% of all of the potential Units (as then contemplated by the Declarant) have been sold and a deed thereto delivered by the Declarant and Builder, or (ii) the date the Declarant, in its absolute discretion, selects as the Turnover Date for this Declaration.

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

“Unit Owner” and “Unit Owners” mean that person or those persons owning fee simple title to a Unit.

The Plan

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

ARTICLE I THE LAND

Subject to Article XVII below, the legal description of the land constituting the Townhome Property, located in the City of Gardner, Johnson County, Kansas, is attached hereto at Exhibit A.

ARTICLE II NAME

The name by which the Townhome Property shall be legally known is “The Reserve at Waverly Pointe”, but the Townhome Property may be marketed under and/or commonly known by any other name designated by the Declarant.

ARTICLE III PURPOSES; RESTRICTIONS

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

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

(a) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing:

(i) an Occupant maintaining a personal or business library, keeping personal or business records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit and also complies with all City ordinances), making business telephone calls or corresponding, in or from a Unit, is deemed to be engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions;

(ii) it shall be the right of the Declarant (including Builder) to use and maintain, during the period of the Declarant’s sale or rental of Units, (A) one or more Units as sales and rental models and offices and for storage and maintenance purposes, and (B) such other portions of the Townhome Property as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction or sale of Unit(s) or the Townhome Property, including, without limitation, the maintenance of a construction and/or sales trailer, which right may not be limited or revoked without the specific consent of the Declarant; and

(iii) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

(b) Common Areas Uses. Except as otherwise provided in this Declaration, the Common Areas shall be used in common by all Unit Owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the Units and their Occupants.

(c) Visible Areas.

(i) Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows or placed on the outside walls of a building or otherwise outside of a residence, or any part thereof, except for seasonable decorations in compliance with any rules and regulations adopted by the Board and except for interior drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige or gray, or as otherwise authorized by the Declarant or the Board.

(ii) No awning, canopy, shutter, or any other device or ornament shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or the Declarant.

(iii) No outside antenna, satellite dish, or other device for the reception or transmission of radio or television or other electronic signals shall be erected or maintained on any Lot or upon the exterior of any Unit, without prior written approval of the Board or the Declarant, and then only in such places and under such conditions as are expressly authorized by the Board or the Declarant. The Board and the Declarant shall have the power to limit the size of the device and require such specific areas and methods of placement of any such device as it deems appropriate in order to render the installation as inoffensive as possible to other Occupants. In the event these limitations, or any part thereof, are deemed unlawful, the Board and the Declarant reserve the right to regulate the placement of such devices in a manner not in violation of the law.

(iv) No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except voice intercoms and devices used exclusively for security purposes.

(v) No artificial flowers, artificial trees or other artificial vegetation shall be permitted on the exterior of any residence or in the yard. No bird baths, statues or other lawn art shall be permitted on the exterior of any residence or in any yard without the prior written consent of the Board or as may be permitted by rules and regulations adopted by the Board. No lawn art may obstruct or interfere with the maintenance activities of the Association, and the Association and its contractors shall have absolutely no liability with respect to any damage to any lawn art caused by such maintenance activities.

(vi) No lights or other illumination (other than street lights) shall be higher than the residence. Exterior holiday lights shall be permitted only between November 15 and January 31. Except for such holiday lights, all exterior lighting shall be white and not colored. All exterior landscape lighting must be approved in advance by the Board or the Declarant.

(vii) No shed, barn, detached greenhouse or outbuilding, basketball goal or court or other sports court of any kind, animal run, trampoline, play house or any other play structure, tree house, batting cage, tennis court, swimming pool or clothesline shall be erected upon, moved onto or maintained upon any Lot or in any yard, except for those that may be installed by or for the Declarant or the Association as part of the Common Areas. An animal house may be located only within the patio area of the Unit.

(viii) No garage sales, sample sales or similar activities shall be held other than as a part of a neighborhood event approved by the Board.

(ix) No fences (including, without limitation, underground electronic pet fences) or patio or boundary walls shall be permitted on any Lot or Common Area, (i) except with the express written consent of the City (if required by the City) and of the Declarant or the Board, and consisting of materials expressly approved by the Declarant or the Board, and (ii) except for any project perimeter fencing that may be installed by or for the Declarant or the Association. Each fenced area of the lawn shall include a gate that is at least four feet wide so that the Association shall have access to such area for lawn maintenance purposes. No underground electronic pet fences may be installed on any Common Area.

(x) Except as otherwise expressly provided in this Declaration, no sign shall be placed or maintained in any Common Area without the approval of the Board or the Declarant.

(d) Offensive Activities. No noxious or offensive activity shall be carried on with respect to any Unit, or upon the Common Areas; nor shall any Unit or Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant. Such provisions, however, shall not be construed to limit the powers or rights of the Declarant (including Builder) or the Association under this Declaration.

(e) Trash. No outdoor burning of trash, grass or construction material shall be allowed on any Lot or in any yard, except as authorized by the Declarant or the Board. No trash, refuse, or garbage can or receptacle shall be placed outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection. The Declarant and Builder shall have the right to maintain construction dumpsters at locations selected by the Declarant.

(f) Garages and Vehicles.

(i) Garage doors shall remain closed at all times except when necessary for vehicle ingress and egress.

(ii) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage. Motor vehicles may be serviced or repaired only in an enclosed garage.

(iii) Overnight parking of motor vehicles, trailers or similar apparatus of any type or character in Common Areas (other than on the Unit's driveway directly in front of the Unit and designated off-street parking areas) or on any street is prohibited, except as expressly authorized by the Board in writing on a short-term basis due to special circumstances. No vehicle (other than an operable, non-dilapidated passenger automobile, passenger van or small truck), commercial truck or van (including, but not limited to, one that bears a sign or other reference to any commercial enterprise on the front, top, sides or rear (other than license plates)), bus, boat, trailer, camper, mobile home, or similar apparatus shall be left or stored overnight in the Townhome Property, except in an enclosed garage or as permitted in clause (v) below. No vehicle from one Unit shall park on the driveway of another Unit or on a common driveway in front of another Unit (without the consent of the Occupants of that other Unit). No vehicle shall be left on any driveway shared by any Units so as to block the entry or exit of vehicles from another Unit.

(iv) Trucks or other vehicles with gross vehicle weight of 12,000 pounds or over are prohibited in the Townhome Property except during such limited time as such truck or vehicle is actually being used during working hours within the Townhome Property for its specific purpose.

(v) Recreational motor vehicles of any type or character are prohibited except:

(1) When stored in an enclosed garage;

(2) Temporary parking on the driveway directly in front of the Unit for the purpose of loading and unloading (maximum of one overnight every 14 days); or

(3) With prior written approval of the Board.

(g) Renting and Leasing. No Unit or part thereof shall be rented or used for transient or hotel purposes, which are defined as: (i) rental of less than six months duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. Each lease agreement shall be in writing, shall require that the tenant and other occupants

comply with all provisions of the Townhome Instruments, shall provide that the lease shall be subject in all respects to the provisions of the Townhome Instruments and to the rules and regulations promulgated by the Board from time to time, and shall provide that the failure by the tenant to comply with the terms of the Townhome Instruments and such rules and regulations shall be a default under the lease. If a tenant fails to comply with the terms of this Declaration or such rules and regulations, the Unit Owner shall, if so directed by the Board, terminate the lease and evict the tenant. Prior to the commencement of the term of a lease, the Unit Owner shall notify the Board, in writing, of the name(s) of the tenant(s) and the time during which the lease term shall be in effect and provide the Board with a copy of the lease. Notwithstanding the existence of a lease, the Unit Owner shall remain liable for all obligations, including, without limitation, the payment of assessments, fines and enforcement charges, under this Declaration with respect to the Unit and shall cause the Unit to be maintained to the same general conditions and standards as then prevailing for owner-occupied Units.

(h) Signs. No sign of any kind shall be displayed to the public view on the Townhome Property except: (i) on the Common Areas, construction entrance, no parking and other signs regarding and regulating the use of the Common Areas, as approved by the Declarant or the Board; (ii) on the Common Areas and model Units, signs advertising the sale and/or rental of Units by the Declarant (including Builder) during the period of its sale and rental of Units; (iii) on the interior side of the window of a Unit, one professionally prepared sign not to exceed four square feet in size advertising the Unit for sale (but not lease or rental); or (iv) with the specific written approval of the Declarant or the Board. No other "for sale", "for lease" or "for rent" signs shall be permitted. One political sign per candidate or issue, not more than three feet high or three feet wide, is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election. If these limitations on the use of signs, or any part thereof, are determined to be unlawful, the Board shall have the right to regulate the use of signs in a manner not in violation of law. In the event of a violation of the foregoing provisions, the Declarant and/or the Association shall be entitled to remove such offending sign and, in so doing, shall not be subject to any liability for trespass, violation of constitutional or other rights, or otherwise.

(i) Maintenance and Replacements. Except for the specific items listed as an Association responsibility in Section 8.1, each Unit Owner shall properly maintain the owner's Unit (including, without limitation, the interior thereof and all portions of an associated patio, deck, porch, front sidewalk, driveway or other concrete area) in a neat, clean and orderly fashion and in good condition and repair at all times. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason shall be of the same materials, colors, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Board. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design, colors and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

(j) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Areas, which may impair the structural integrity of any improvement.

(k) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, restrictions on the size, number and type of such pets; and (ii) the right of a Unit Owner or Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Townhome Property or other Units or Occupants. All pets shall be confined to the residence, except when on a leash controlled by a responsible person. Unit Owners and Occupants shall immediately clean up after their pets on all streets, yards, Common Areas, areas owned by others and their own Lot. Any costs incurred by the Association to correct any damage caused by a pet shall be assessed against the Unit Owner of the Unit keeping the pet and such Unit as a Special Unit Expense.

(l) Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) as a separately designated and legally described fee simple estate subject to the terms, conditions and provisions of this Declaration. The Unit's rights and interest in the Common Areas shall be deemed to be conveyed or encumbered with the Unit even though those rights and interest are not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Area by referring to the Lot designation of the Unit on the relevant Plat and the appropriate recording references of the initial page of this Declaration. Failure to include a reference to this Declaration in any deed shall neither invalidate any such transfer nor relieve the Unit from being subject to or benefited by this Declaration. The right of a Unit Owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal, and any Unit Owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five days after title to any interest in that Unit Owner's Unit has been transferred to another person. In addition, each Unit Owner agrees to provide to a purchaser of that owner's Unit a copy of all Townhome Instruments.

(m) Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would unlawfully or unfairly discriminate against any Unit Owner in favor of another. In addition, notwithstanding any provision hereof, or any rule or regulation, the Association shall make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Common Areas, provided that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association.

(n) Landscaping. No trees, bushes, flowers or other landscaping (other than landscaping installed by or for the Declarant (including Builder) or the Association) shall be installed or maintained by or for any Unit Owner or Occupant, without the express written consent of the Declarant or the Board.

(o) Architectural Control. Following the completion of construction of any Unit, no landscaping change or exterior addition or alteration to a Unit shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the Board and (if required) approved by the City. However, no such approval of the Board shall be required for the Declarant (including Builder) to construct the Units and Common Areas.

(p) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board, on behalf of the Association, may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable, and not in conflict with this Declaration, to promote harmony, to serve the best interests of the Unit Owners, as a whole, and the Association, and to protect and preserve the nature of the Townhome Regime and the Townhome Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

(q) Fines and Other Enforcement. The Board may enforce all of the foregoing restrictions, rules and regulations by establishing, levying and collecting fines and other enforcement charges, having vehicles, trailers or other apparatus towed away at the expense of the owner, and/or taking such other lawful actions as the Board, in its sole discretion, deems appropriate.

3.3 Enforcement of Restrictions. Any violation by a Unit Owner or Occupant or with respect to a Unit of any rule or regulation adopted by the Association, or the breach of any restriction, covenant or provisions contained in this Declaration, shall give each of the Declarant and the Association the right, in addition to all other rights set forth herein:

(i) To establish, levy and collect monetary fines as a Special Unit Expense upon the offending Unit Owner and the Unit in such amounts as the Board deems necessary to effect compliance with the requirements.

(ii) To enter upon the portion of the Townhome Property upon which or as to which such violation or breach exists and to summarily abate and remove, or repair and maintain, at the expense of the offending Unit Owner as a Special Unit Expense, any structure, thing or condition which may exist thereon, contrary to the intent and meaning of the provisions hereof, and the Declarant, the Association, or their successors, assigns or agents shall not thereby be deemed guilty in any manner of trespass. Notwithstanding the foregoing, the Declarant and the Association shall have no right or authority to alter (other than to repair) or demolish any items of construction without institution of judicial proceedings.

So long as the Association or the Declarant (as applicable), its agents, servants or employees exercise reasonable care in the performance of such repairs, maintenance or alterations, they shall not be liable to the offending Unit Owner for any damages caused in so doing. The cost of such work shall be collected from the offending Unit Owner as a Special Unit Expense in the same manner as other assessments. In addition, the Association or its representatives, together with emergency personnel, shall have an immediate right of access to all Units in the Occupants' absence under emergency conditions;

(iii) To enjoin, abate or remedy the continuance of any breach by appropriate legal proceedings, either at law or in equity; and/or

(iv) To recover from the offending Unit Owner, in any legal proceedings to enjoin, abate or remedy a breach, all costs of such action, including court costs and reasonable attorneys' fees.

ARTICLE IV IMPROVEMENT DESCRIPTIONS

4.1 Residential Buildings. Subject to Article XVII below, there will be up to two residential buildings as part of the Townhome Property, each containing four to six Units, making a total of up to 10 Units. The Units are of one or two stories, with basements, and one car garages. These buildings are of wood frame construction, with brick, stone or stucco and hardboard siding, and composition shingle roofs. The principal materials of which these buildings are constructed are wood, glass, concrete, brick, stone, composition shingle, and drywall. The residential buildings and Units are and will be located as shown on the Plats. Each Unit will have a private exterior entrance and a driveway in front of the Unit's attached garage.

4.2 Common Areas. The Common Areas may include entry monuments and related landscaping, lighting and water sprinkler systems; yards; green areas; and a common water sprinkler system. The Declarant shall have the right to designate, alter and improve the Common Areas and to add and designate additional Common Areas from time to time in its discretion. The Declarant shall have the right to cause all or any part of the Common Areas to be owned and maintained by, and/or subject to an easement in favor of, the City or other governmental authorities or the Master Association.

ARTICLE V UNITS

5.1 Unit Designations. Each of the dwelling units, each of which is called a "Unit", is or will be designated by a Lot number shown on the Plat indicating the separate Lot on which that Unit is located. All Units are of the general categories or types described on the attached Exhibit B, as amended from time to time by the Declarant, which also sets forth the general composition of each type of Unit. The category or type of each Unit built will be shown on Exhibit C, as amended from time to time by the Declarant.

5.2 Composition of Units. Each Unit constitutes a single fee simple estate and consists of real estate within the boundaries designated for that Unit on the Plat, and all

improvements located thereon. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(i) the portion of the building and improvements located within the boundaries of the Lot;

(ii) any and all fixtures and appliances installed for the exclusive use of that Unit, including, without limiting the generality hereof, built-in cabinets and appliances, furnaces, hot water heaters, heat pumps, air conditioning units, television antennas and satellite dishes, and utility meters, and components of the foregoing, if any (even if located outside the boundaries of the Lot);

(iii) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, to the extent serving only that Unit; and

(iv) non-exclusive easements for the use of the Common Areas, including, without limitation, an unrestricted ingress and egress to the Unit that is perpetual and passes with the Unit upon transfer of ownership of the Unit.

5.3 Party Walls. Each wall which is built as a part of the original construction of the Units upon the Townhome Property and placed or intended to be placed on the dividing line between two or more Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence and willful acts or omissions shall apply thereto.

(a) The reasonable repair and maintenance of a party wall to the extent not covered by insurance shall be shared by the Unit Owners who make use of the wall in proportion to such use.

(b) Notwithstanding any other provision of this Declaration, any Unit Owner who by his, her or its or an Occupant's negligence or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(c) The right of any Unit Owner to contribution from any other Unit Owner with respect to the obligations relating to party walls shall be considered an appurtenant right and pass to any and all successors in interest to the title of such Unit.

(d) The boundary line between Units which share a party wall is and shall be deemed to be the center line of the wall regardless of the actual location of the platted boundary line.

(e) In the event of a dispute between Unit Owners relating to a party wall, the Board shall have the right to make a decision in settlement of such dispute, and the decision of the Board shall be final and binding on the Unit Owners.

ARTICLE VI COMMON AREAS

6.1 Common Areas - General Description. All of the Townhome Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described in this Declaration or on the Plats as a part of a Unit or a public street, are Common Areas. The Common Areas are also described, in part, in Section 4.2.

6.2 Undivided Interest in Common Areas. The Common Areas shall be owned by the Association, but each Unit shall be deemed to have an undivided interest in the Common Areas and (except as otherwise provided in this Declaration) in the “common expenses” as allocated among all of the Completed Units on an equal basis per Completed Unit. No Unit Owner may waive or release any rights in the Common Areas or any liability for common expenses. Further, the rights in the Common Areas shall not be separated from the Unit to which they appertain.

6.3 Enjoyment. Each Unit Owner shall have a right and easement of ingress to, egress from, and use and enjoyment of the Common Areas which shall be appurtenant to, inseparable from and shall pass with the title to each Unit. Each Unit Owner may use the Common Areas, subject to reasonable rules and regulations adopted by the Board of Directors, in accordance with the purpose for which they were intended, but without hindering or encroaching upon the lawful rights of other Unit Owners.

6.4 Conveyance of Common Areas.

(a) Notwithstanding anything in this Declaration to the contrary, fee title to portions of the Common Areas may be conveyed or subjected to a mortgage or security interest by the Association if Unit Owners owning at least 67% of the Units agree to that action. All proceeds from any such sale shall constitute assets of the Association to be held or distributed in accordance with the terms of this Declaration.

(b) An agreement to convey Common Areas or subject them to a mortgage or security interest shall be evidenced by the execution of an agreement, or ratification thereof, in the same manner as a deed, by the requisite number of Unit Owners. The agreement shall specify a date after which the agreement will be void unless previously recorded. The agreement and all ratifications shall be effective only when recorded in the Recording Office.

(c) The Association may contract to convey fee title to the Common Areas, or subject them to a mortgage or security interest, on behalf of the Unit Owners, but no such contract shall be enforceable against the Association unless or until executed and recorded in the manner set forth above. Subject to the provisions of this Section, the Association shall have all powers necessary or appropriate to effect the conveyance or encumbrance of the Common Areas, including the power to execute deeds or other instruments. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of the Common Areas shall be void and of no effect, unless made in accordance with this Declaration. No conveyance or encumbrance of Common Areas

pursuant to this Declaration shall deprive any Unit Owner of its continued right of access and support or otherwise affect pre-existing encumbrances.

ARTICLE VII

HOMEOWNERS ASSOCIATION

7.1 Establishment of Association. The Association has been or will be formed to be and to serve as the Unit Owners' association for the Townhome Property.

7.2 Membership and Voting Rights. Until the Turnover Date, the Association shall have two classes of membership, namely Class A and Class B. The Declarant shall be the sole Class A member. Each Unit Owner, including the Declarant as an owner, shall be a Class B member. Until the Turnover Date, all voting rights of the members shall be held by the Class A member, except that the Class B members shall have the sole right to vote on matters described in Section 10.10 (certain elections not to restore), Section 12.3(a)(vii) (certain assessment increases), and Section 15.1 (certain amendments) below.

After the Turnover Date, there shall be only one class of membership which shall consist of the owners of the Units, and every such owner shall be a member.

The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of ownership of a Unit shall automatically transfer membership to the transferee.

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

Subject to the foregoing, the Association shall be the sole judge of the qualifications of each Unit Owner to vote and to participate in the Association's meetings and proceedings.

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

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

from time to time, change the number and terms of directors, provided, that in any such event the terms of at least one-third of the directors shall expire annually.

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

7.4 Authority of Board. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and certain specified exterior portions of the Units (as set forth in Section 8.1 below) and assess and collect funds for the payment thereof, and to do all things, and exercise all rights provided by the Townhome Instruments, or the Townhome Act, that are not specifically reserved to Unit Owners or the Declarant. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Association, acting through the Board, shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Units; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Association shall be paid out of the general funds of the Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Declarant or any Unit Owner from enforcing any building, use or other restrictions in his or her own name.

(b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Association, the Common Areas and the property within the Townhome Property.

(d) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

(e) To enter into and perform agreements from time to time with the Declarant and other parties regarding the performance of services and matters benefiting both the Declarant and the Association and its members and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with the Declarant, the Master Association, other developers, other homes associations, and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the Townhome Property, and the sharing of expenses related thereto.

(g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

(h) To engage the services of a security guard or security patrol service.

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Townhome Property; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Townhome Property neat in appearance and in good order.

(j) To exercise any architectural, aesthetic or other control and authority given and assigned to the Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Townhome Property.

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines, including, without limitation, the establishment, levying and collection of monetary fines and other enforcement charges for violations of this Declaration and such rules, regulations and guidelines.

(l) To exercise such other powers as may be set forth in this Declaration or in the Articles or Bylaws of the Association.

7.5 Delegation of Authority; Management Contracts. The Board may delegate all or any portion of its authority to a managing agent, which may be the Declarant or an affiliate of the Declarant. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for management (i) shall be terminable by the Association for cause on no more than thirty (30) days' written notice; (ii) shall be terminable by either party, without cause and without penalty, on not more than ninety (90) days' written notice; (iii) shall not exceed one year unless renewed by agreement of the parties for successive one-year periods; and (iv) shall be bona fide and commercially reasonable to the Association at the time entered into under the circumstances then prevailing. The Association also shall have the authority to enter into contracts with the Declarant or an affiliate of the Declarant for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of maintenance and

repair services, provided the same are bona fide and commercially reasonable to the Unit Owners at the time entered into under the circumstances then prevailing.

ARTICLE VIII

MAINTENANCE AND REPAIR

8.1 Association Duties and Responsibilities. The Association shall:

(a) maintain, repair and replace all improvements constituting a part of the Common Areas; all trunk, branch and common utility lines to the extent not maintained by the utility provider; and all common sanitary sewer lines within the Townhome Property (including, without limitation, all sanitary sewer service lines from the applicable manhole or the point of connection at the public main or lateral line to the entry point into the applicable building and all sanitary sewer service lines within the building to the extent common to more than one Unit;

(b) provide for the periodic painting (but not repair or replacement) of exterior painted surfaces, for the cleaning, repair and replacement of gutters, and for the repair and replacement of roofs, of each Completed Unit;

(c) provide lawn care, consisting of mowing, edging, fertilizing and weed control of grass areas, whether in a Common Area or on a Lot (but such services by the Association shall not include the care of any landscaping around a foundation, deck or patio area of any Unit or in any area made inaccessible to the Association);

(d) provide for spring start-up, winterization, and repair, maintenance and water for the use of any common lawn sprinkler system (but such services shall not include the irrigation of any landscaping around a foundation, deck or patio area of any Unit);

(e) To the extent not provided as a service by any governmental authority or the Master Association, provide, one day per week, for the collection and disposal of rubbish and garbage from each Completed Unit subject to assessment. The Association, however, shall not be obligated to provide recycling services.

The Board, in its discretion, shall determine the scope and timing of the foregoing services and functions of the Association and shall determine the amounts of the foregoing reserves. Neither the Declarant, the Association nor any of their respective officers, directors, managers, representatives or agents shall have any liability to any Unit Owner or other person if no reserves are established or maintained or if the reserves established or maintained are inadequate. The Board, in its discretion, may cause the Association to provide other exterior maintenance services for the Units that are not part of the required services described above.

Except to the extent that a loss is actually covered by insurance proceeds from insurance maintained by the Association, the Association shall not have any responsibility to repair the interior of any Unit, or component thereof, or personal property within any Unit.

8.2 Unit Owner Responsibilities. Subject to the Association's obligations to repair and/or replace specific items in the event of a casualty loss covered by insurance maintained by the Association or as expressly provided in Section 8.1 above, each Unit Owner shall repair and maintain in good condition at all times the interior and exterior of the Unit, and all components thereof, owned by that Unit Owner. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit Owner shall include, without limitation, repair, maintenance and replacement of all appliances, all plumbing fixtures, lighting fixtures, electrical fixtures, and all windows, screens, garage doors, screen doors, and other doors, including the frames, sashes and jambs, and the hardware therefor. Except for those specific items listed as an Association responsibility in Section 8.1, each Unit Owner shall repair and maintain in good condition at all times the exterior of his or her Unit and related improvements, including, without limitation, all landscaping, all patio enclosures, patios, decks, porches, screen porches, sidewalks, driveways, concrete pads, air conditioning units, heat pumps, utility meters, utility lines to the extent located within the Unit and serving only that Unit and chimneys and flues (in each case whether or not within the boundaries of the Lot). In the event a Unit Owner fails to timely make a repair or perform maintenance required of that Unit Owner, or in the event the need for maintenance or repair of any part of the Common Areas or other improvements is caused by the negligent or intentional act of any Unit Owner or Occupant, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied, or imposed by law, the Association may perform the same, and to the extent the cost of such repair or maintenance is not covered by actual insurance proceeds paid by the Association's insurance, whether because of a deductible, exclusion or otherwise, the cost thereof (plus a reasonable overhead fee) shall constitute a Special Unit Expense on such Unit Owner's Unit and on such Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused by the Unit Owner, shall be made by the Board in good faith and shall be final and binding.

ARTICLE IX

UTILITY SERVICES

By acceptance of a deed to a Unit, each Unit Owner agrees to pay for all utility services separately metered, submetered or otherwise separately charged to that Unit. All other utility costs provided through the Association shall be common expenses and paid by the Association.

ARTICLE X

INSURANCE; LOSSES

10.1 Fire and Special Coverage Insurance. The Board shall obtain and maintain for all buildings (other than those under construction before there is at least one occupied Completed Unit in the building), structures, fixtures and equipment (whether as a Common Area or Unit), and for the Association's personal property and supplies on the Townhome Property, at the Association's cost and as a common expense, blanket standard special form coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard special form coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the

then current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations and other similar items normally excluded from coverage). This insurance shall also:

- (a) provide coverage for the Units and built-in or installed improvements, fixtures and equipment that are part of the base or standard Unit;
- (b) be written in the name of the Association for the use and benefit of the Association and the Unit Owners, and provide for the payment of losses thereunder by the insurer to the Association (or its nominee) as insurance trustee for the benefit of the Association, each Unit Owner and the holder of each first mortgage of record on the Units, as their interests appear and as set forth in this Declaration;
- (c) contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy;
- (d) be paid for by the Association, as a common expense, subject to Section 12.8 below;
- (e) contain a waiver of subrogation of rights by the carrier as to the Association, its officers and directors, and all Unit Owners and Occupants;
- (f) provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners or Occupants; and
- (g) be primary, even if a Unit Owner has other insurance that covers the same loss.

The Unit Owner shall be responsible for the deductible or other noncovered loss under the Association's insurance on any property damage or casualty loss to the owner's Unit, unless the damage or casualty loss is caused by the negligence or willful misconduct of another Unit Owner or his or her Occupant, in which case the other Unit Owner shall be responsible for such deductible or other noncovered loss. The amount of such deductible and all exclusions shall be uniform for all Units and shall be set by the Board from time to time in a reasonable amount.

10.2 Liability Insurance. The Association shall obtain and maintain, at the Association's cost and as a common expense, a commercial policy of general liability insurance covering all of the Common Areas, and any other areas under the Association's supervision, and Units, if any, owned by the Association, even if leased to others, insuring the Association, the directors, and the Unit Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) \$1,000,000.00, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit

Owner because of negligent acts of the Association, the Board, or other Unit Owners or Occupants, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association.

10.3 Fidelity Coverage. The Board may obtain and maintain, at the Association's cost and as a common expense, fidelity insurance providing coverage for the Association against dishonest acts on the part of officers, directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association.

10.4 Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Kansas which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service, if available, or if not available, the best rating available. 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.

10.5 Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, officers and directors liability insurance, and such other insurance as the Board may determine.

10.6 Nominee; Power of Attorney. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit Owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit Owner, and their respective first mortgage holders, the Association, and the Townhome Property, runs with the land, and is coupled with an interest.

10.7 Unit Owners' Insurance. Each Unit Owner and Occupant shall obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and

furnishings, and similar matters of the type and nature of coverage commonly referred to as “tenants’ improvements and betterments” or an “HO6” policy, with coverage for the dwelling components in a minimum amount of \$10,000.00 (or such greater amount as may be specified by the Board). Each Unit Owner or Occupant may carry other insurance, in addition to that provided by the Association pursuant hereto, as that Unit Owner or Occupant may determine, subject to the provisions hereof. All insurance separately carried by a Unit Owner shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Unit Owners and Occupants, shall name the Association as an additional insured and shall not be cancellable or subject to reduction in coverage except after 30 days prior written notice to the Association. Upon written request of the Association, each Owner shall promptly provide written evidence to the Association of the existence and continuance of the foregoing insurance coverages.

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

10.9 Insufficient Insurance. In the event the improvements forming a part of the Townhome Property or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against by the Association, or, if insured against by the Association, the actual insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then (unless the Unit Owners and their first mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction) the Association shall make repairs, restoration or reconstruction of the improvements so damaged or destroyed as a common expense (to the extent not covered by actual insurance proceeds and to the extent no specific Unit Owner is liable for and pays the insufficient amount) of all Unit Owners subject to assessment.

10.10 Election Not to Restore. The Association may, with the written consent of all Unit Owners in the Townhome Property and their first mortgagees, both given within sixty (60) days after the applicable damage or destruction, determine not to repair, restore or reconstruct any damage or destruction. In the event of such an election not to repair or restore damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction shall be distributed among the owners of the damaged Units, and the holders of their respective mortgage liens, as their interests may appear, and all appropriate amendments to this Declaration shall be made.

ARTICLE XI
GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

11.1 Easements of Enjoyment; Limitations. Every Unit Owner shall have a right and easement (i) for ingress to and egress from such owner's Lot and Unit over and across all of the applicable portions of the Common Areas, and (ii) for enjoyment in, over and upon all other Common Areas for their intended purposes, which rights and easements shall be appurtenant to and shall pass with the title to a Unit subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, including, without limitations, parking rules and regulations. Each Unit Owner shall be deemed to have delegated that Unit Owner's right of enjoyment to the Common Areas and to ingress and egress to the Occupants of that owner's Unit.

11.2 Right of Entry for Repair, Maintenance and Restoration. Each of the Declarant and the Association shall have a blanket easement and right of entry and access to, over, under, upon and through all of the Townhome Property, including each Unit (and the interior thereof) and the Common Areas, to enable the Declarant and the Association (i) to perform its obligations, rights and duties pursuant hereto with regard to installation, maintenance, repair, replacement, restoration and/or servicing of any and all utilities, improvements, and other items, things or areas of or in the Townhome Property and (ii) to abate any noise, odor or other nuisance. In the event of an emergency, the Declarant's and the Association's right of entry to a Unit may be exercised forcibly (unless the Association has been provided with a pass key to the Unit) and without notice; otherwise, the Declarant or the Association (as applicable) shall give the Unit Owners or Occupants of a Unit reasonable advance notice prior to entering the Unit.

11.3 Easements for Encroachments. Each Unit and the Common Areas shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Areas created or arising by reason of overhangs, by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements, or by reason of errors on the Plats. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Plats, shall and do exist so long as the encroachments remain.

11.4 Easement for Support and Service. Every portion of a building or utility line or any improvement on any portion of the Townhome Property contributing to the support of or services to another building, utility line or improvement on another portion of the Townhome Property shall be burdened with an easement of support and service for the benefit of all other such buildings, utility lines, improvements and other portions of the Townhome Property.

11.5 Easements for Proper Operations. Blanket easements in favor of the Association, the Declarant (including Builder), the City, and other appropriate public authorities and/or providing companies, and their contractors are hereby granted and reserved upon, over and under all of the Townhome Property and Units (including the interiors thereof) for ingress to and egress from, and for the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, the road system and all walkways, and for

all other purposes necessary for the proper operation of the Townhome Property. In the event of an emergency, the right of entry to a Unit may be exercised forcibly and without notice; otherwise, the Unit Owners or Occupants will be provided with reasonable advance notice prior to entering a Unit. By these easements it shall be expressly permissible for the Declarant (including Builder) and/or the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to install, construct and maintain the necessary appurtenances and improvements on, above, across and under the Townhome Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Townhome Property by Unit Owners and Occupants.

11.6 Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas and Lots in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

11.7 Easements Reserved to the Declarant. Non-exclusive easements are hereby granted and reserved to the Declarant (including Builder), its successors and assigns, over, under and upon each Unit and the Common Areas (a) beginning with the recordation of this Declaration and ending ten (10) years after the date of the closing by the Declarant (including Builder) of the first sale of a Completed Unit to a bona fide purchaser, for access to and for the purpose of completing improvements for which provision is made in this Declaration and for inspecting, modifying or adding to the improvements or utilities within or constituting a part of any Unit for the benefit of any adjacent Unit, (b) for the periods provided for warranties for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made by the Declarant (including Builder) with Unit purchasers, and (c) for the initial sales and rental period, to maintain and utilize one or more Units and appurtenances thereto, for sales, construction and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

All rights and easements granted and reserved to the Declarant (including Builder), its successors and assigns, pursuant to this Section, shall be exercised and utilized, as the case may be, in a reasonable manner, and in such way as not to unreasonably interfere with the operation of the Association and the rights of owners and occupants of Units.

11.8 Power of Attorney. Each Unit Owner other than the Declarant, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit Owner, such easements, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit Owner, the Association, and the Townhome Property, runs with the land, is coupled with an interest, and is irrevocable.

11.9 General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements, but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

11.10 Keys to Units. Each Unit Owner shall at all times provide the Association or the manager with a current set of keys to the owner's Unit, except as may be expressly waived by the Board.

ARTICLE XII ASSESSMENTS AND ASSESSMENT LIENS; RESERVE FUNDS

12.1 Types of Assessments. Assessments shall be determined and assessed against the Units by the Board, in its discretion, subject to the requirements and procedures set forth in this Declaration and the Bylaws. Each Unit Owner shall be obligated, and by acceptance of a deed to a Unit (whether or not it be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) annual operating assessments to pay common expenses, (b) special assessments to pay common expenses and for capital improvements, and (c) Special Unit Expenses, all of which assessments shall be established and collected as provided in this Declaration.

12.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote and provide for the health, safety and welfare of Unit Owners and Occupants and the best interests of the Townhome Property.

12.3 Elements-Appportionments; Due Dates.

(a) Annual Operating Assessments Payable Monthly.

(i) Beginning with the closing of the first sale of a Completed Unit by the Declarant (including Builder), annual operating assessments to pay common expenses shall be payable in monthly installments and shall be assessed against (i) all Completed Units owned by parties other than the Declarant (including Builder) and (ii) all Completed Units rented or for rent by the Declarant (including Builder) to third parties. The first annual operating assessment for each such Completed Unit shall be prorated based upon when it became a Completed Unit during the year.

(ii) Annually, in advance where practical, the Board shall estimate, and allocate among all Completed Units subject to assessment and their owners on an equal amount per Unit basis, "common expenses" of the Association, consisting of the following:

(1) the estimated fiscal year's cost of the maintenance, repair, and other services to be provided or paid for by the Association (in excess of reserves to be expended therefor);

(2) the estimated fiscal year's costs of management and professional services to be paid by the Association;

(3) the estimated fiscal year's costs for insurance premiums to be provided and paid for by the Association;

(4) the estimated fiscal year's costs for utility services not separately metered or charged to Unit Owners;

(5) an amount deemed adequate by the Board to maintain a reserve for future repairs and replacements to the applicable Common Areas, a reserve for painting of Completed Units, and a reserve for future repairs and replacement of the Completed Units' roofs and gutters; and

(6) the estimated fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

(iii) The Board shall thereupon allocate to each Completed Unit subject to assessment that Unit's equal share of the total estimated common expenses, and thereby establish the annual operating assessment for each such separate Completed Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(iv) The annual operating assessment for each Unit subject to assessment shall be payable in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying assessments without a discount for prepayment. The due dates of any such installments shall be established by the Board, or, if it fails to do so, an equal monthly pro rata share of the annual operating assessment for a Unit shall be due the first day of each month.

(v) If the amounts so collected (together with payments by or from the Declarant) are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board as a special operating assessment among the Completed Units subject to assessment on an equal amount per Unit basis, and shall become due and payable on such date or dates as the Board determines.

(vi) 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 Unit Owners.

(vii) The rate of annual assessment per Completed Unit shall be in addition to any other assessments chargeable to a particular Completed Unit and the initial casualty insurance premium described in Section 12.8. The rate of annual assessment per Completed Unit for year 2008 shall be set by the Board. Thereafter, the rate of annual assessment upon each Completed Unit may be increased (A) by the Board from time to time, without a vote of the members, by up to 15% over the rate of annual assessment in effect for the preceding year (plus any actual increase in insurance premiums), or (B) at any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present (in person or by proxy) at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Association to perform its duties as specified in this Declaration.

(b) Special Assessments for Capital Improvements.

(i) In addition to the annual operating assessments and any special operating assessments, the Board may levy, at any time, special assessments to construct, reconstruct or replace capital improvements to the extent that reserves therefor and any applicable insurance proceeds with respect thereto are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation or to correct any deficiency or defect creating a safety or health hazard to Occupants) shall not be constructed, nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to ten percent (10%) or more of that fiscal year's budget, without the prior consent of Unit Owners owning at least 60% of the then existing Units.

(ii) Any such special assessment shall be prorated among all Completed Units on an equal amount per Unit basis, and shall become due and payable on such date or dates as the Board determines.

(c) Special Unit Expenses. In addition to their liability for common expenses, Unit Owners shall also pay any and all assessments by the Association for Special Unit Expenses in the amount attributable to their respective Units as determined by the Board of Directors in its reasonable discretion. Special Unit Expenses may be based upon actual or estimated costs to the Association attributable to a Unit Owner, independent billings of respective creditors, usage, estimated insurable values, insurance risks, on the basis of the ratio of the size of each Unit to the size of all Units in the aggregate, or any other reasonable basis. In the event the Association incurs any special or unusual

expense that does not benefit all of the Unit Owners, then those Unit Owners benefiting from such expense shall solely be responsible to pay for that expense. In this regard, the Board in good faith shall decide whether any such expense is of a nature that it does not benefit all of the Unit Owners and whether certain Unit Owners are benefiting Unit Owners and, if so, the appropriate amount of such cost to be assessed to each of the benefiting Unit Owners as a Special Unit Expense. The Board's decisions relating to Special Unit Expenses shall be made in good faith and shall be final and binding.

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

12.4 Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit Owner subject thereto. Written notice mailed or delivered to a Unit Owner's Unit shall constitute notice to that Unit Owner, unless the Unit Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner.

12.5 Effect of Nonpayment of Assessment; Remedies of the Association.

(a) If any installment of an assessment is not paid within ten (10) days after the same is due, the entire unpaid balance of the assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

(b) If any installment of an assessment is not paid within ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at 10% per annum, compounded monthly (or at such other rate as the Board may establish from time to time by rule) (or, if lower, the maximum rate permitted by law), (ii) charge a late fee of 5% of the delinquent amount (or such other reasonable, uniform, late fee, as the Board may establish from time to time by rule), (iii) charge the cost of collection, including attorney fees and other out-of-pocket expenses and/or (iv) cut-off or restrict the services to be provided to the Unit by the Association and the use of the Common Areas.

(c) All assessments, together with interest, late fees, and costs, including attorney fees, shall be a charge and lien in favor of the Association upon the Unit against which each such assessment is made.

(d) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that assessment, including all future installments thereof, interest, late fees, and costs, including attorney fees, may be filed with the Recording Office pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, and the amount of the unpaid portion of the assessments and charges, and shall be signed by an officer or other agent of the Association. For each certificate so filed, the Association shall be entitled to collect from the Unit Owner of the Unit described therein a fee of \$250.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Unit and which fee amount may be increased by the Board from time to time to reflect cumulative increases in any appropriate consumer price index (as selected by the Board) after December 31, 2009.

(e) The lien provided for herein shall become effective from the time a certificate of lien was duly filed therefor, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Kansas for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(f) Each assessment together with interest, late fees, and costs, including attorney fees, shall be the joint and several personal obligation of the Unit Owners who owned the Unit at the time when the assessment fell due and all subsequent Unit Owners.

(g) In addition to the other remedies available to it, the Association, as authorized by the Board, may bring or join in an action at law against the Unit Owner(s) personally obligated to pay the same, and an action to foreclose a lien. In any foreclosure action, the applicable Unit Owner(s) shall be required to pay a reasonable fair market rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent permitted by Kansas law.

(h) In the event that a Unit Owner has twice been delinquent for at least 30 days in the payment of assessments due to the Association, the Unit Owner may be required by the Board, in the discretion of the Board, to make and maintain a security deposit with the Association not in excess of twice the amount of monthly assessment then in effect, which security deposit may be collected as are other assessments. Such a security deposit shall be held by the Association as part of its general funds, and no interest shall be due and payable or credited thereto. The Association may apply the security deposit to the Unit Owner's obligations at any time when such Unit Owner is ten (10) or more days delinquent in paying his or her assessments. Upon the sale of the Unit by such Unit Owner, any amount of the security deposit that is remaining after satisfaction of all amounts owed with respect to the Unit at the time of such sale shall be refunded to the former Unit Owner.

(i) No claim of the Association for assessments and charges shall be subject to setoffs or counterclaims. To the extent permitted by law, each Unit Owner hereby waives the benefit of any redemption, homestead and exemption laws now or hereafter in effect, with respect to the liens created pursuant to this Declaration.

(j) No Unit Owner may waive or otherwise avoid liability for the assessments provided for in this Declaration by non-use or by waiving use or enjoyment of the Common Areas or the services provided by the Association, or any part thereof, or by abandonment of his, her or its Unit. No Unit Owner shall be entitled to a reduction or abatement of any assessment as a result of any failure or interruption of any utility or other service or any damage to or destruction of or the making of any repairs or replacements to any Common Area or to any Unit.

(k) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their interests in the Townhome Property, and are necessary to continue to provide services, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

12.6 Subordination of the Lien to First Mortgages. To the extent provided in the Townhome Act, the lien of the assessments and charges provided for herein (except any utility-related charges properly chargeable by the terms hereof to a particular Unit and any Special Unit Expenses) shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any purchaser at a foreclosure sale shall take the property free of any claims for any such unpaid installments of assessments and charges against the mortgaged Unit to the extent relating to periods prior to the date of the deed vesting legal title in the successor owner. The foregoing will not relieve any successor owner from the obligation for assessments or charges accruing thereafter. If the Unit Owner subsequently redeems the Unit from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

12.7 Certificate Regarding Assessments. Upon request from the Unit Owner, the Board shall, for a reasonable charge, furnish a certificate, signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

12.8 Initial Casualty Insurance Premium. Upon closing of the initial sale of each Completed Unit by the Declarant (including Builder), the buyer shall pay to the Association a one-time initial insurance premium assessment for the Unit in the amount of \$400.00 (or such other amount as may be specified by the Declarant).

12.9 Assignment or Sale. Upon assignment, sale or other transfer of his or her Unit to a new owner, the transferring Unit Owner shall be relieved of liability for any assessments levied on such Unit by the Association after the closing date of such assignment, sale or transfer.

ARTICLE XIII

CONDEMNATION

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

ARTICLE XIV

TOWNHOME INSTRUMENT REQUIREMENTS

14.1 Association Control. Except in its capacity as a Unit Owner of unsold Units, the Declarant (including Builder) or its agent will not retain any interest in any of the Common Areas after the Turnover Date, except as expressly provided or contemplated herein. Beginning with the Turnover Date, the Units Owners will assume control of the Association and the Common Areas, as elsewhere provided herein.

14.2 The Declarant's Rights and Obligations. Subject to the provisions of and except as otherwise provided in this Declaration, the Declarant (including Builder), in its capacity as an owner of unsold Units, will be vested with the rights and be subject to the duties of a Unit Owner set forth herein, or in any other Townhome Instrument, or established by law.

14.3 Unit Owners' Rights and Obligations. Each Unit Owner will be vested with the rights and be personally liable for and subject to the duties of a Unit Owner set forth herein, or in any other Townhome Instrument, or established by law, during the time of that owner's ownership of a fee simple interest in a Unit.

14.4 Compliance with Declaration, Bylaws, Rules and Regulations. Each Unit Owner shall comply strictly with the provisions of this Declaration, the Articles, the Bylaws and any rules and regulations of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an

action to recover damages or for injunctive relief, or both, maintainable by the Declarant, the Association and/or, to the extent permitted by law, by an aggrieved Unit Owner.

14.5 Master Association. In addition to being a member of the Association and being bound by this Declaration, each Unit Owner will also be a member of the Master Association and will be bound by, and the owner's Lot and Unit will be subject to, the Master Association Declaration (as it may be amended and supplemented from time to time), as recorded with the Recording Office. The Master Association will be responsible for certain entry areas, recreational facilities and other common areas that benefit the overall Waverly Pointe area of which the Townhome Property is a part. Unit Owners will be responsible for paying dues and assessments to the Master Association, as set forth in the Master Association Declaration, which, at the option of the Board of the Association and with the written consent of the Master Association, may be included in and payable as part of the assessments payable hereunder to the Association which will then pay such amounts to the Master Association.

ARTICLE XV AMENDMENTS

15.1 Power to Amend. Except as otherwise specifically provided in this Declaration, additions to, changes in, or amendment of this Declaration shall require the consent of Unit Owners owning at least 60% of the Units and, until the sale by the Declarant (including Builder) of the last contemplated Unit, the Declarant. Notwithstanding the foregoing (except for the provision above relating to the requirement of the City's consent):

(a) The consent of Unit Owners and holders of first mortgages of at least eighty percent (80%) of the Units and the written consent of the City shall be required to terminate the Townhome Regime and this Declaration.

(b) The Declarant reserves and shall have the absolute unilateral right and power to amend the Townhome Instruments to the extent necessary to (i) cause the Townhome Instruments to comply with the Townhome Act or conform to the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit, (ii) update Exhibit A, Exhibit B or Exhibit C of this Declaration, (iii) comply with any requirement the City makes as a condition to approval by the City of some matter relating to the development of the Townhome Property, (iv) correct any typographical error, or factual error or omission that needs to be corrected in the opinion of the Declarant, or (v) until December 31, 2010, make any other amendment that the Declarant determines to be necessary or appropriate. No such amendment by the Declarant shall require the consent of any Unit Owner or the Association.

(c) The consent of the Master Association shall be required for any amendment to or deletion of Section 14.5 above or any termination of the Townhome Regime and this Declaration.

15.2 Method to Amend. An amendment to this Declaration, adopted with the consents of Unit Owners, shall be executed with the same formalities as to execution as this Declaration

by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the provisions of this Article XV. Any amendment adopted by the Declarant pursuant to authority granted it pursuant to this Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in the Declarant by this Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recording Office.

15.3 Form of Consent of Unit Owners. The consent of Unit Owners to any amendment of this Declaration may be obtained in the form of written consent(s) executed by the Unit Owners of at least the specified percentage of Units or in the form of a formal resolution approved by the Unit Owners of at least the specified percentage of Units at a duly held meeting of the members.

ARTICLE XVI GENERAL PROVISIONS

16.1 Security. **THE ASSOCIATION, THE DECLARANT AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, REPRESENTATIVES AND AGENTS SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE TOWNHOME PROPERTY. NEITHER THE ASSOCIATION, THE DECLARANT NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, REPRESENTATIVES OR AGENTS SHALL BE HELD LIABLE FOR ANY LOSS, DAMAGE, INJURY OR DEATH BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. EACH UNIT OWNER, OCCUPANT, TENANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS, DAMAGE, INJURY OR DEATH TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGES THAT THE DECLARANT, THE ASSOCIATION, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, MANAGERS, REPRESENTATIVES AND AGENTS HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY UNIT OWNER, OCCUPANT, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, RELATIVE TO ANY SECURITY MEASURES RECOMMENDED OR UNDERTAKEN OR NOT UNDERTAKEN.**

16.2 No Liability for Utility Failure and Certain Personal and Real Property Damage. Except to the extent covered by insurance maintained by the party to be charged, neither the Declarant, the Board, nor the Association shall be liable for injury or damage to persons or property caused by the elements or other events of nature, or resulting from utility failure or from water, rain, dust or sand which may leak or flow from outside of the building, or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance or orders of a governmental authority. No diminution or abatement of assessments shall be claimed or allowed for such injury or damage or for such inconvenience or discomfort.

16.3 Commercial Area. At the northeast corner of 175th Street and Waverly is an area of approximately 15 acres that the Declarant presently owns and which Declarant intends to be developed as a retail/office/commercial area (the “Non-Residential Area”). No Owner or family member, agent, tenant, assign or grantee of a Unit Owner shall in any way object to or oppose any application for any zoning change, special use permit, development plan approval or similar governmental approval for the use of the Non-Residential Area (or any part thereof) for such uses; nor shall the Association object to or oppose in any way any such application. By acceptance of a deed to the Unit, each Unit Owner, for himself and each family member, agent, tenant, assign and grantee of the Unit Owner, hereby consents to the future zoning and development of the Non-Residential Area as a retail/office/commercial area and to the construction of all improvements proposed to be developed by the Declarant or its assigns thereon.

16.4 Covenants Running With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Townhome Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

16.5 Enforcement. In addition to any other remedies provided in this Declaration, the Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association’s rules and regulations. Failure by the Declarant, the Association or by any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge.

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

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

16.6 Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Townhome Act, the latter’s requirements shall prevail, and the conflicting language shall be deemed to be invalid and void, provided that

such invalidity shall in no wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect. This Declaration shall be and remain in full force and effect even if the Townhome Property (or any part thereof) has not been properly submitted to the provisions of the Townhome Act or the formalities of the Townhome Act have not been completely followed.

16.7 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply to entities, men or women shall in all cases be assumed as though in such case fully expressed.

16.8 Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

ARTICLE XVII EXPANDABLE LAND

17.1 Expandable Land.

(a) The legal description of the Expandable Land is set forth on Exhibit A-1 to this Declaration.

(b) The Declarant hereby reserves the right and option to expand the Townhome Property from time to time in the future to include all or any part or parts of the Expandable Land. Such right and option shall be exercised by the Declarant amending Exhibit A and Exhibit A-1 to add to the Townhome Property such portion(s) of the Expandable Land that the Declarant then desires to add to the Townhome Property. There are no limitations on this right and option of the Declarant, except as provided in this Section 17.1. In particular, no consent of the Board of Directors or any Unit Owner shall be required for the Declarant to exercise such right and option or to so amend Exhibit A.

(c) The Declarant's right and option to expand the Townhome Property shall automatically expire ten (10) years after the initial recording of this Declaration in the Recording Office and may not be exercised by the Declarant at any time thereafter.

(d) There are no limitations as to which portions (if any) of the Expandable Land may be added by the Declarant to the Townhome Property. Different portions of the Expandable Land may be added to the Townhome Property at different times and there are no limitations fixing the boundaries of those portions by legal descriptions.

(e) The maximum number of Units that may be added to the Townhome Property from the Expandable Land is 150.

(f) The structures to be erected on any Expandable Land added to the Townhome Property are expected to be generally compatible and consistent with structures on other portions of the Townhome Property in terms of structure type, quality of construction, the principal materials to be used, and architectural style; provided,

however, no assurances are given with respect thereto and the Declarant reserves the right to make such changes with respect to future structures as the Declarant deems appropriate. In connection therewith, the Declarant shall have the right to amend and update Exhibit B attached hereto without the consent of the Board of Directors or any other Unit Owner.

(g) In addition to construction of additional Units, other improvements may be made by the Declarant on the Expandable Land added to the Townhome Property that are generally comparable to those improvements on the rest of the Townhome Property.

(h) Upon the completion of Units on the Expandable Land added to the Townhome Property, the Declarant shall update and amend Exhibit C to this Declaration to be effective as of the completion of such Units.

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

THE DEVELOPER:

WAVERLY 175, LLC

By: ROGLER INVESTMENTS, INC.,
Manager

By: _____
Kenneth A. Rogler, President

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on December ____, 2007 by Kenneth A. Rogler, as President of Rogler Investments, Inc., a Kansas corporation, as Manager of Waverly 175, LLC, a Kansas limited liability company.

My Commission Expires:

[SEAL]

Notary Public in and for said County and
State
Print Name: _____

EXHIBIT A

LEGAL DESCRIPTION OF TOWNHOME PROPERTY

Lot 1, The Reserve at Waverly Point, First Plat, a subdivision in Gardner, Johnson County, Kansas.

Lots 2A, 2B, 2C and 2D, and Tract A, The Reserve at Waverly Pointe, Fourth Plat, a subdivision in Gardner, Johnson County, Kansas.

LEGAL DESCRIPTION OF EXPANDABLE LAND

Lots 3, 4, 5 and 6, The Reserve at Waverly Point, Third Plat, a subdivision in Gardner, Johnson County, Kansas.

[Is there any unplatted townhome (row house) ground?]

CATEGORIES OF UNITS

<u>Name of Unit Category</u>	<u>Characteristics</u>
A	2 stories, basement, 3 bedrooms, 2½ baths, 1 car garage
B	1 story, basement, 2 bedrooms, 2 baths, 1 car garage

EXHIBIT C

LEGAL DESCRIPTION AND TYPE OF EACH UNIT BUILT
(as of _____)

<u>Lot No.</u>	<u>Unit Category</u>
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2A	
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2B	
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2C	
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2D	
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