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ENCLAVE OF MILL CREEK

DECLARATION OF COVENANTS, RESTRICTIONS, ASSESSMENTS AND EASEMENTS

This Declaration of Covenants, Restrictions, Assessments and Easements (the "Declaration") of the Enclave of Mill Creek is made effective as of the 16th day of December, 2021, pursuant to the provisions of the Townhome Act (defined below).

Recitals

- A. The Enclave of Mill Creek Townhome Association (the "Association") is or will be a Kansas not for profit corporation formed for the benefit of the Unit Owners (defined below) and for the ownership of the Common Areas (defined below) and the improvements thereon and appurtenances thereto.
- B. This Declaration is made (1) 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; (2) to establish a Unit Owners Association to (i) administer the Association and the Townhome Property (defined below), (ii) enforce the covenants, easements, charges and restrictions hereinafter set forth, and (iii) raise funds through assessments (special and dues) to accomplish such purposes.

ARTICLE I. THE LAND

EMC Development, LLC, a limited liability company ("Developer") hereby subjects all of the Townhome Property to the covenants, restrictions, assessments and easements hereinafter set forth in this Declaration and submit the Townhome Property to the provisions of the Townhome Act. The legal description of the real property constituting the Townhome Property, located in the City of Shawnee, Johnson County, Kansas, is attached hereto at Exhibit A.

ARTICLE II. NAME

The name by which the Townhome Property will be collectively and legally known is "Enclave of Mill Creek" but the Townhomes may be marketed and commonly known by any other name designated by the Board.

ARTICLE III. DEFINITIONS

III.1. "Articles" means the articles of incorporation, filed or to be filed with the Secretary of State of Kansas, incorporating the Enclave of Mill Creek Townhome Association as a Kansas not for profit corporation, as amended from time to time, to serve as the Association under this Declaration.

III.2. "Association" means the entity created by the filing of the Articles and is also one and the same as the association required under the Townhome Act.

III.3. "Board" and "Board of Directors" mean those persons who, as a group serve as the Board of Directors of the Association.

III.4. "Bylaws" means the bylaws of the Association, as amended from time to time.

III.5. "City" means the City of Shawnee, Kansas.

III.6. "Common Areas" or "Common Elements" mean all the real estate, and the improvements and amenities located thereon, owned by the Association for the common use and enjoyment of the Unit Owners and residents within the Townhome Property.

III.7. "Common Expenses" mean any and all expenses incurred by the Association in connection with the management of the Association, maintenance of the Common Areas and Common Elements and administration of the Association, including, but not limited to, expenses for landscaping, lawn care, snow removal, improvements to the Common Areas and Common Elements, security lighting, Association insurance premiums, utility services for the Common Elements, maintenance and management costs, other costs associated with the Common Areas and Common Elements and fees of outside consultants.

III.8. "Completed Units" means a Unit where the residence is substantially completed and for which a temporary or permanent certificate of occupancy has been issued by the City.

III.9. "Declaration" means this instrument, by which the Townhome Property is hereby submitted to the provisions of the Townhome Act and the Townhome Property is subjected to the covenants, restrictions, assessments and easements set forth herein.

III.10. "Dues" means the "Annual Assessment" as determined by the Board.

III.11. "Lot" means any lot or subdivision or split as shown as a separate building lot on any recorded Plat of all or part of the Townhome Property upon which a townhome residence has been or will be constructed.

III.12. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit Owner.

III.13. "Person" means an individual, corporation, partnership, limited liability company, trust, or other legal entity capable of holding title to real property.

III.14. **"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.

III.15. **"Private Streets"** means all streets, cul-de-sacs, and other roadways within the Townhome Property that are private streets for the use of all residents and guests of the Townhome Property and not dedicated as public streets of the City and all individual and common (shared) driveways leading from such streets and roadways to the garage of each Unit.

III.16. **"Recording Office"** means the Office of the Register of Deeds of Johnson County, Kansas.

III.17. **"Townhome Act"** means the Kansas Townhouse Ownership Act found at K.S.A. §§ 58-3701, *et seq.*

III.18. **"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.

III.19. **"Townhome Property"** means the Lots and the tracts of land hereinafter described as being submitted to the Townhome Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto. The Townhome Property is legally described in Exhibit A attached hereto and each signature page.

III.20. **"Unit"** means collectively a Lot, or portion thereof, 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. The boundaries of each Unit will consist of the designated footprint areas as depicted on one or more plats recorded in the Recording Office, and each Unit includes the garage and all windows, locks, doors and mechanical and utility installations which exclusively service the respective Unit.

III.21. **"Unit Owner"** and **"Unit Owners"** mean that person or those persons owning a Unit in fee simple.

ARTICLE IV. USE RESTRICTIONS

The Townhome Property will be benefited by, and subject to, the following restrictions:

IV.1. **Unit Uses.** Except as otherwise specifically provided in this Declaration, no Unit may be used for any purpose other than that of a residence for individuals living together as a single household unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, vacation rental, short-term rental, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, day care center, care or treatment facility. Notwithstanding the foregoing: (a) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit and also complies with all City ordinances), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared

customarily incidental to residential use and is not in violation of these restrictions; and (b) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

IV.2. Common Areas Uses. The Common Areas may be used in common by all Unit Owners and occupants and their agents and guests, in accordance with the purposes for which they are intended, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Areas may be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and occupants.

IV.3. Visible Areas.

(a) Nothing may be caused or permitted to be hung or displayed on the outside or inside of windows or placed on the outside walls or surface of a building or otherwise outside of a Unit, or any part thereof, such as, but not limited to, decorative flags (excluding the US flag and seasonal/holiday flags, wreathes or banners), banners, plaques, metal/plastic décor, etc. and except for interior drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige or gray. The cost of any repairs necessary to the outside walls of a building resulting from the hanging or placing of the US flag or seasonal/holiday flags, wreaths or banners on the outside of walls or surface will be the responsibility of the Unit Owner placing the US Flag or seasonal/holiday flag/banner. Any exceptions to the above may be requested for approval by the Board.

(b) No awning, canopy, shutter, or any other device or ornament, may 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 deck, patio, porch or balcony, visible to the exterior, unless authorized by the Board. No speaker, horn, whistle, siren, bell or other electric/electronic sound device may 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.

(c) No poles, posts, rods, driveway markers, or reflective poles, posts, or rods will be permitted on driveways or street sides with the exception of metal posts/stakes used on a temporary basis to stabilize newly planted trees or vegetation. Poles to provide guidance to snowplows are acceptable.

(d) No bird baths, statues or other lawn art will 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 its contractors.

(e) No lights or other illumination (other than street lights) may be higher than the residence. Exterior holiday lights will be permitted only between Thanksgiving and January 15. Exterior holiday lighting must be turned off by 11 P.M. each night. Except for such holiday lights, all exterior lighting must be white (clear) and not colored. All exterior lighting must be approved in advance by the Board.

(f) No structure of any kind may be erected upon, moved onto or maintained upon the exterior of any residence or in any yard on a Lot without advanced written approval from the Board.

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

(h) No fences, patio walls or boundary walls will be permitted on any Lot or Common Area, (i) except as may be constructed around a patio with the express written consent the Board, and consisting of materials expressly approved by the Board, and (ii) except for any project perimeter fencing installed by or for the Association, with the consent of the City (if required). No privately owned fence or other structure may extend into any area platted as a "Common Area."

IV.4. Offensive Activities. No noxious or offensive activity may be carried on with respect to any Unit, or upon the Common Areas; nor may any Unit or Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant. No outdoor burning of trash, grass or construction material will be allowed on any Lot. No trash/recycle receptacle or lawn refuse may be placed outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection. All such receptacles must be stored so that they would not be visible from the street. No grass clippings, trash, ashes or other refuse may be thrown, placed or dumped upon any Lot or Common Area; nor may anything be done which may be or become an annoyance or a nuisance to the Townhome Property. Each Owner must properly maintain his or her Lot in a neat, clean and orderly fashion. All residences and exterior structures must be kept and maintained in good condition and repair at all times. No composting will be allowed on any Lot or in any Common Area without the advanced written approval of the Board.

IV.5. Quiet Enjoyment. All portions of a Unit outside of enclosed structures must be kept in a clean and tidy condition at all times, and nothing may be done, maintained, stored or kept outside of enclosed structures on a Unit which, in the determination of the Board, causes an unclean, unhealthy or untidy condition to exist, is obnoxious to the eye, emits foul or obnoxious odors, or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants of other Units.

IV.6. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, may not be pursued or undertaken on any part of the Townhome Properties.

IV.7. Garages and Vehicles.

(a) Garage doors should typically remain closed except when necessary for vehicle ingress and egress or when working in the garage, yard, or driveway. Garages may be used solely for vehicle and storage and may not be converted to living space. Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(b) No vehicle (other than an operable passenger automobile, passenger van or small truck), commercial truck or van, bus, boat, trailer, camper, mobile home, or similar

apparatus may be left or stored overnight in the Townhome Property, except in an enclosed garage or as permitted below. Driveways may not be used by residents for parking purposes; provided that driveways may be used by Unit guests for parking during daytime hours. No vehicle from one Unit may park on the driveway of another Unit, on any common ingress/egress drive, directly in front of another Unit (without the consent of the owner of that other Unit) or in the "hammerhead" or turn around of any drive. No vehicle may be left on any driveway shared by any Units so as to block the entry or exit of vehicles from another Unit.

(c) Semi-trucks or other vehicles used for commercial purposes are prohibited on 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.

(d) Recreational motor vehicles are not permitted on Townhome property except (i) when stored in an enclosed garage, (ii) temporary (less than 24 hours) parking on the driveway or street directly in front of the Unit for the purpose of loading and unloading, or (iii) with prior written approval of the Board.

IV.8. Renting, Leasing, Signs. No Unit or part thereof may be rented or leased. No sign of any kind may be displayed to the public view on the Townhome Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, as approved by the Board; (b) in the yard immediately in front of the Unit, a sign advertising the Unit for sale; or (c) with the specific written approval of the Board.

IV.9. Maintenance and Replacements. Except for the specific items listed as an Association responsibility in this Declaration, each Unit Owner must properly maintain the owner's Unit (including, without limitation, any portions of a patio, deck, and porch) in a neat, clean and orderly fashion and in good condition and repair at all times. Repairs to correct damage or deterioration must be accomplished within 60 days of occurrence, discovery, or a verified complaint by a Unit Owner, about a condition unless an extension is granted by the Board due to extenuating circumstances. All replacements of all or any portion of a completed structure because of age, casualty, loss or other reason must be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Board.

IV.10. Construction in Easements. No structure, planting or other material may be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas will be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

IV.11. Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind may be raised, bred or kept in any Unit, Lot or on the Common Areas. Notwithstanding the foregoing, a Unit Owner will only be allowed to keep two (2) dogs or two (2) cats; or one (1) dog and one (1) cat within the Unit at any one time. Household pets must be "indoor pets." Doghouses exterior to a Unit are not permitted. All unit owners must comply with the City of Shawnee animal

ordinances. Unit Owners and pet owners must immediately clean up their pets' solid waste on all streets, Lots and Common Areas.

IV.12. Conveyances. Each Unit will be conveyed or transferred (voluntarily or involuntarily) as a separately designated and legally described fee simple estate subject to the terms, conditions and provisions hereof. The rights in the Common Areas will be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit or Lot, it will be sufficient to lawfully describe a Unit or Lot 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 will neither invalidate any such transfer nor relieve the Unit from being subject to this Declaration. The right of a Unit Owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal, and any Unit Owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five days after an interest in that Unit Owner's Unit has been transferred to another person. Upon notification of the transfer, the Association will provide to the purchaser a copy of the Declaration, Rules and Regulations, and the Bylaws.

IV.13. Discrimination/Handicapped Accommodation. No action may 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 Board will make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Common Areas, provided, that nothing contained herein will be construed to mean or imply that any such accommodation be at the cost of the Association.

IV.14. Landscaping. No trees or bushes (other than trees or bushes installed by or for the Association) may be installed by or for any Unit Owner, without the express written consent of the Board. Such permission of the Board does not convey responsibility for installation, maintenance, or replacement of such landscaping to the Association; such permitted landscaping remains the sole responsibility of the Unit Owner. Trees and bushes installed as part of the Common Areas will be the responsibility of the Association to maintain.

IV.15. Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit Owners, as a whole, and the Association, and to protect and preserve the nature of the Townhome Property. A copy of all rules and regulations, and amendments will be furnished by the Board to the Unit Owners prior to the effective date of such rules and regulations.

IV.16. Fines and Other Enforcement. The Board may enforce all of the restrictions, rules and regulations set forth herein by levying fines and/or taking such other lawful actions as the Board, in its sole discretion, deems appropriate.

ARTICLE V.
ADDITIONAL LANDS; BUILDING RESTRICTIONS

V.1. Contiguous Property. Real property contiguous to Townhome Property may become a part thereof by:

(a) The purchase of contiguous land by the Association, and the adoption by the Board of Association of a resolution specifically subjecting such property to the terms of this Declaration; or

(b) The owners of contiguous real property may, by a written agreement with the Association, subject said real property to these restrictions and covenants causing such real property to be accepted as a part of the Townhome Property. Such agreement, which may include such terms and conditions as the Board may deem appropriate, including but not limited to the payment of impact fees and dedication of Common Area, will not become effective until it is approved in writing by the Board of the Association.

V.2. Board Criteria. The Townhome Instruments give the Board the authority to maintain and operate the Association's affairs, including the maintenance, operation and regulation of the Townhome Property. Because the Association will ultimately be responsible for the maintenance and repair of building exteriors and Common Areas, the Board must proceed cautiously before accepting new buildings and units within the Townhome Property. The criteria and standards set forth in this Declaration are intended to produce an aesthetically pleasing community of high quality, in harmony with the existing environment, utilizing compatibility and complimentary designs, all combining to protect the property of each member of the Association. These standards and criteria apply to all new construction, including buildings, units, grading, excavating, additions or modifications to Common Areas or any portion of Townhome Property. The Association reserves the right to modify or amend these standards and criteria or to waive the application of any particular provision of them.

V.3. Plan Approval. No construction, improvement, or alteration may begin on any Lot until written approval has been given by the Board. The Lot owner and/or builder must submit any and all plans involving new development, construction and/or modifications of property that is subject to the Declaration prior to commencement of any construction or modifications. New construction and subsequent alterations or additions must be compatible with, and of the same or similar quality of construction, color, and materials as, the other exiting Units. The roof, exterior walls, doors and trim colors must be harmonious with the exterior color scheme of existing Units. Unit sizes must be substantially similar to existing Units. All proposals must be in writing and include hard copies of the following:

- (a) Site plans;
- (b) Elevation drawing for all sides of each building, grading and drainage plans to assure proper drainage through curbs and drains;
- (c) Landscaping plans including sprinkler layout;

- (d) Other supporting documents as required by the Board;

Plans must be sufficiently detailed to include information such as:

- (i) Location and size of units;
- (ii) Materials and colors;
- (iii) Number of units and square footage of each unit;
- (iv) Foundation type; and
- (v) Sidewalk construction.

V.4. Additional Provisions for Plans, Development and Construction. All inspections required by the City during construction and through the Certificate of Occupancy must be performed by the City. If during construction modifications to previously approved plans become necessary or desirable, such modifications are to be submitted to the Board for review and prior approval before implementation. The Lot owner and/or builder does not have the authority to approve any change request by a potential buyer or contracted buyer in regard to the common elements or limited common elements, including but not limited to request for added or altered features on a units exterior such as decorative shutters, changing color, extending the size of a deck or driveway, adding or changing landscaping. Any proposed amenities within the area of the new development must be reviewed and approved by the Board. A project plan depicting the size, location, materials, description of the benefit and value to the Association, and other information as requested must be submitted. It is the responsibility of the Lot owner and/or builder to ensure that the building construction or landscaping does not adversely affect drainage of the Townhome Property. The flow of water must be directed to drainage structures so as not to allow runoff into adjacent property nor allow standing water in paved or swale areas. Private streets must have concrete curbs to promote proper drainage so as not to pool or cause damage to property within the Townhome Property. The Lot Owner and/or builder are solely responsible for any damage to streets, sidewalks, Common Elements and/or adjoining lots occurring during lot clearing, construction, clean up, landscaping and other related activities performed by the Lot owner, contractor, subcontractors, employees or agents. Any damage to Association property such as, but not limited to roads, water and sewer lines will be the responsible of the builder to repair at its expense. All repairs to Association property must be made to the satisfaction of the Board.

V.5. New Common Areas. Any new Common Areas must include entry monuments and related landscaping, lighting and water sprinkler systems, paved streets, green areas, detention facilities if necessary, all as may be approved by the Board.

ARTICLE VI. **COMMON AREAS**

VI.1. Common Areas -General Description. All of the Townhome Property, including all of the land and all improvements and appurtenances, except those portions labeled or described in this Declaration or on the Plats as a part of a Lot or Unit, are Common Areas.

VI.2. Undivided interest in Common Areas. The Common Areas will be owned by the Association, but each Unit will be deemed to have an undivided interest in the Common Areas and in the Common Expenses as allocated among all of the Units on an equal basis. No Unit Owner may waive or release any rights in the Common Areas or any liability for Common Expenses.

ARTICLE VII. HOMEOWNERS ASSOCIATION

VII.1. Establishment of Association; Membership. The Association has been or will be formed to be and to serve as the Unit Owners' association of the Townhome. The Association shall have two classes of voting members:

- (a) *Class A.* Class A members shall be all owners other than Developer. Class A members shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as such persons shall among themselves determine, but in no event shall more than one vote be cast with respect to any Unit.
- (b) *Class B.* Class B member(s) shall be the Developer, who shall be entitled to ten (10) votes for each Townhome Unit owned or to be owned by the Declarant. The Class B membership shall terminate and be converted to Class A membership on the happening of either of the following events, whichever occurs earliest:
 - (1) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
 - (2) Not later than six months after the sale of the last Unit of the development. From and after the happening of these events, whichever occurs earlier, the Class B member shall be deemed to be a Class A member entitled to one vote for each Unit owned by it.
 - (3) Developer relinquishes its Class B membership.

VII.2. Membership will be appurtenant to and may not be separated from ownership of any Unit, and transfer of ownership of a Unit will automatically transfer membership to the transferee. Provided, however, that a transfer fee shall be payable as set forth in Section 12.10 below. The Board may suspend the right of a member to vote with respect to his, her, or its Unit for failure to pay assessments when due, or for failure to observe other of the terms of the Townhome Instruments pursuant to rules and regulations duly adopted by the Board from time to time.

VII.3. Board of Directors. The Association will hold an annual membership meeting of its members, and Unit Owners will elect Directors, as set forth in the Bylaws. The terms of the Directors will be controlled as provided in the Bylaws.

VII.4. Authority of Board. The Board will have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and certain specified exterior portions of the Units

and assess and collect funds for the payment thereof, and to do all things, and exercise all rights provided by the Townhome Instruments, or the Townhome Act, that are not specifically reserved to Unit Owners. In addition to the powers granted by other portions of this Declaration, the Bylaws or by law but subject to all of the limitations set forth in this Declaration, the Association, acting through the Board, will 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 (Dues and Special) which have been or may be imposed upon any of the Units; provided, that this right of enforcement will not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Association. The expense and cost of any such enforcement proceedings by the Association will be paid out of the general funds of the Association, except as herein provided.

(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.

(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 (Dues and Special) 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 other parties regarding the performance of services and matters benefiting the Association and its members and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with 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; to pick up and remove loose material, trash and rubbish of all kinds in the Townhome Property; and to do

any other things necessary or desirable in the judgment of the Board to keep any property in the Townhome Property neat in appearance and in good order.

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

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

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

VII.5. Delegation of Authority: Management Contracts. The Board may delegate all or any portion of its authority to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a Common Expense, provided, however, that any agreement for professional management must be terminable by the Association for cause on no more than thirty (30) days' written notice; must be terminable by either party without cause and without penalty, on not more than ninety (90) days' written notice; and may not exceed one year unless renewed by agreement of the parties for successive one-year periods.

ARTICLE VIII. MAINTENANCE AND REPAIR

VIII.1. Association Duties and Responsibilities. The Association will:

(a) unless otherwise the responsibility of the City or a public utility, maintain, repair and replace all improvements constituting a part of the Common Areas (including, without limitation, the Private Streets/Drives) and all trunk and branch utility lines to the point of connection to the entry point into the applicable building (to include communication, water, and electric), and common sewer lines within the Townhome Property (including, without limitation, all sanitary sewer service lines and water lines from the applicable manhole or the point of connection at the main line to the entry point into the applicable building);

(b) maintain the detention facilities that are part of the Common Areas, including, without limitation, the removal and clearing of debris, cutting of vegetation, restoration of eroded areas, removal of silt, repair, maintenance and replacement of structural facilities, and (when required by the City) re-certification by a licensed engineer that the detention facility has full storage capacity and that all structural facilities are functional;

(c) provide for the periodic painting of exterior painted surfaces so as to maintain its weather resistance and satisfactory aesthetic appearance, for the cleaning,

repair and replacement of gutters, and for the repair and replacement of roofs and driveways of each Unit;

(d) provide lawn care, consisting of mowing, edging, fertilizing and weed control of grass areas, trimming and replacement of all bushes, trees and grasses whether in a Common Area or on a Lot (but such services will not include the care of any areas of bushes, shrubs, gardens or flowers around a foundation, deck or patio area of any Unit or in any area made inaccessible to the Association); provide and pay for the costs of spring start-up, winterization, and repair, maintenance and water for the use of a common lawn sprinkler system.

(e) provide snow (but not ice) clearing for the Private Streets and for driveways, and sidewalks, as soon as possible when the accumulation reaches two (2) inches or more and the snow has stopped. The Association will not be required to apply any salt or other chemical treatments to driveways or sidewalks; when icing conditions exist on driveways, or sidewalks the Association may arrange to have those areas lightly sanded to prevent slip/fall conditions;

(f) establish, maintain and expend reserve funds for the future repair and replacement of the Private Streets, sidewalks, detention facilities and other Common Areas, for the future repair and replacement of Units' roofs and gutters and driveways, and for the periodic painting of exterior painted surfaces, as described above; and

(g) to provide for trash collection and removal services for Units.

The Board, in its discretion, will determine the scope and timing of the foregoing services and functions of the Association. Neither the Association nor any member of the Board will have any liability to any Unit Owner or other person 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 will not have any responsibility to repair the interior of any Unit, or component thereof, or personal property within any Unit. Furthermore, the Association will not have any responsibility for the repair of any damage caused by the gross negligence or willful misconduct of a Unit Owner or its family members, tenants, invitees, guests or contractors (which repair will be the responsibility of the Unit Owner).

VIII.2. Individual Responsibilities. Each Unit Owner will repair and maintain in good condition at all times the interior of the Unit, and all components thereof, owned by that Unit Owner. This repair and maintenance responsibility of a Unit Owner will also include, without limitation, repair, maintenance of all windows, screens, garage doors and lights, 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 this Declaration, each Unit Owner will repair and maintain in good condition at all times the exterior of his or her Unit and related improvements, including, without limitation, all patio enclosures, patios, decks, porches, driveways, concrete pads, air conditioning units, utility meters, heat pumps and chimneys and flues (whether or not within the boundaries of the Unit). In the event a Unit Owner fails to timely make a repair or perform maintenance (60 days from written notice by the Board, unless an extension of time is granted by the Board due to extenuating circumstances) required of that

Unit Owner, or in the event the need for maintenance or repair of any part of the Common Areas (including any trunk or branch utility or sewer lines) is caused by the negligent or intentional act of any Unit Owner or occupant, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied, or imposed by law, the Association may perform the same, and 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 will constitute a special individual Unit assessment, as hereinafter defined, on the Unit Owner's Unit and on that Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused by the Unit Owner, will be made by the Board.

ARTICLE IX. UTILITY SERVICES

By acceptance of a deed to a Unit, each Unit Owner agrees to pay for all utility services separately metered or sub-metered or otherwise separately charged to that Unit. All other utility costs will be Common Expenses and paid by the Association.

ARTICLE X. INSURANCE

X.1. **Fire.** Insurance for coverage of damage from fire or similar casualty will be paid for by the Association, as a Common Expense, provide that the insurance will not be prejudiced by any acts or omissions of individual Unit Owners; and be primary, even if a Unit Owner has other insurance that covers the same loss. The Unit Owner will be responsible for any noncovered loss under the Association's insurance on any property damage or casualty loss to Owner's Unit, unless the damage or casualty loss is caused by the negligence or willful misconduct of another Unit Owner or his occupant, in which case the other Unit Owner will be responsible for noncovered loss. The amount of such deductible and all exclusions will be uniform for all Units and may be set by the Board from time to time in a reasonable amount.

X.2. **Liability Insurance.** The Association will obtain and maintain, at the Association's cost and as a Common Expense, a commercial policy of general liability insurance covering all of the Common Areas, public ways and any other areas under the Association's supervision, and Units; if any, owned by the Association insuring the Association, the directors, and the Unit Owners and occupants, with such limits as the Board may determine, but not 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 will contain a "severability of interest" provision, or, if it does not, an endorsement which will preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, or other Unit Owners, and will 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.

X.3. Fidelity Coverage. The Board may obtain and maintain, at the Association's cost and as a Common Expense, fidelity insurance providing coverage for the Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association.

X.4. 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.

X.5. Nominee. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who will 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, 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, may 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 authority is for the benefit of each and every Unit Owner, and their respective first mortgage holders, and the Association, and the Townhome Property, runs with the land, and is coupled with an interest.

X.6. Unit Owners' Insurance. Each Unit Owner and occupant must 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 "HOA" policy. Unit Owners shall also be responsible for deductibles under the Association's insurance for claims involving an Owner's Unit (for example, roof damage); in the event the Unit Owner acquires insurance to cover such deductible, the Association shall be named an additional insured under the policy.

X.7. Sufficient Insurance. In the event the improvements forming a part of the Townhome Property or any portion thereof suffers damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof is sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction will be undertaken by the Association and the insurance proceeds will be used in payment therefore; 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, elect not to make the repair, restoration or reconstruction, then such repair, restoration or reconstruction will not be undertaken.

X.8. Insufficient Insurance. In the event the improvements forming a part of the Townhome Property or any portion thereof suffers damage or destruction from any cause or peril which is not insured against, or, if insured against, the actual insurance proceeds from which will 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, elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction) the Association may make repairs, restoration or reconstruction of the improvements so damaged or destroyed at the 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 in proportion to their respective undivided interests in the Common Areas. Should any Unit Owner refuse or fail after reasonable notice to pay that Unit Owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association will be assessed against the Unit of such Unit Owner and that assessment will have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

X.9. Election Not to Restore. The Association may, with the written consent of all Unit Owners 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 will be distributed among the owners of the damaged Units, and the holders of their respective mortgage liens (as their interests may appear), in the proportions of their interests in the Units.

ARTICLE XI. **EASEMENTS**

XI.1. Right of Entry for Repair, Maintenance and Restoration. The Association will have a right of entry and access to, over, under, upon and through all of the Townhome Property, including each Unit (and the interior) and the Common Areas, to enable the Association to perform its obligations, rights and duties with regard to maintenance, repair, restoration and/or servicing of any and all utilities, improvements, and other items, or areas of or in the Townhome Property. In the event of an emergency, the Association's right of entry to a Unit may be exercised forcibly and without notice; otherwise, the Association must give the Unit Owners or occupants of a Unit reasonable (approximately 24 hours) advance notice prior to entering a Unit.

XI.2. 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 will 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.

XI.3. Easements for Proper Operations. Easements in favor of the Association will exist upon, over and under all of the Townhome Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, internet, electricity, security systems, and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Townhome Property. By these easements it will be expressly permissible for 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 will have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association will 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.

XI.4. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

XI.5. Representative. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association or its designated representative, to execute, deliver, acknowledge and record, for and in the name of such Unit Owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This authority is for the benefit of each and every Unit Owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

XI.6. General. The easements and grants provided herein will 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 will not defeat or fail to reserve said rights or easements but the same will be deemed conveyed or encumbered, as the case may be, along with the Unit.

ARTICLE XII.

ASSESSMENTS AND ASSESSMENT LIENS, RESERVE FUNDS

XII.1. Types of Assessments. Each Unit Owner will be obligated, and by acceptance of a deed to a Unit (whether or not it be so expressed in such deed) is deemed to agree to pay to the Association: (a) annual operating assessments (Dues) to pay common expenses, (b) special assessments to pay common expenses and for capital improvements, and (c) special individual Unit assessments, all of such assessments to be established and collected.

XII.2. Purpose of Assessments. The assessments levied by the Association will be used at the discretion of the Board to promote and provide for the health, safety and welfare of Unit Owners and occupants and the best interests of the Townhome Property.

XII.3. Dues. Annual operating assessments (Dues) to pay Common Expenses will be payable in monthly installments and will be assessed against all Units.

(a) Annually, in advance where practical, the Board will estimate, and allocate among all Units subject to assessment and their owners on an equal amount per Unit basis, the Common Expenses of the Association, consisting, without limitation, of the following:

(i) the estimated fiscal year's cost of the maintenance, repair, and other services to be provided or paid for by the Association.

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

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

(iv) the estimated amount required to be collected to maintain a working reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

(v) the estimated amount deemed adequate by the Board to maintain a reserve for future repairs and replacements of the Private Streets and detention facilities, a reserve for painting of Units, and a reserve for future repairs and replacement of the Units' exteriors, roofs and gutters; and

(vi) 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.

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

(c) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency may be assessed by the Board as a Special Operating Assessment among the Units subject to assessment on an equal amount per Unit basis, and will become due and payable on such date or dates as the Board determines. The amount of special operating assessment will be limited according to the terms specified below.

(d) 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 will be retained as reserves and will in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit Owners.

(e) The initial rate annual assessment (Dues) per Unit will be set by the Board, however are estimated to be \$325.00 per month. Following the initial assessment (Dues) the Board with a majority vote of the Board conducted at the annual meeting of the unit owners, will have the power to set, and will set, the rate of annual assessments (Dues) at an amount that will permit the Association to perform its duties as specified in the declarations provided that the amount of the increase in the annual assessment (Dues) does not exceed an amount equal to a 10% increase over the preceding years assessments (Dues). Any proposed increase of over 10% must be approved by two thirds of the unit owners in attendance at the annual meeting of the unit owners.

(f) Assessments for Capital Improvements. In addition to the annual operating assessments (Dues) 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 and any applicable insurance proceeds are insufficient. If the assessment would exceed an amount equal to ten percent (10%) or more of that fiscal

year's budget, it must be approved by a vote of two-thirds (2/3rds) of the Members. Any such special assessment will be prorated among all Units on an equal per Unit basis and will become due and payable on such date or dates as the Board determines.

XII.4. Special Individual Unit Assessments. If a unit owner fails to maintain the exterior of his or her unit as described in this Declaration, the Board, after reasonable notice, may make the necessary repairs which are the responsibility of the owner and levy assessments against the owner to recover the repair costs. Costs may include late charges, interest and collection charges. Any such assessment will become due and payable as determined by the Board.

XII.5. Defense of Claims. If any Unit Owner commences a lawsuit or files a counterclaim or cross-claim against the Association, the Board, or any committee, or any individual director, officer or committee member of the Association, and such Unit Owner fails to prevail in such lawsuit, counterclaim or cross-claim, the Association, Board, or individual director, officer or committee member sued by such Unit Owner will be entitled to recover from such Unit Owner all litigation expenses incurred in defending such lawsuit, counterclaim or cross-claim, including reasonable attorneys' fees. Such recovery right will constitute a special assessment against the owner's Unit and will be enforceable against such Unit.

XII.6. Effective Date of Assessment. Any assessment will be effective as of the date of the written notice is mailed or delivered to the Unit Owner. Written mailed or delivered notice to the Unit Owner will constitute notice to the Unit Owner.

XII.7. Effect of Nonpayment of Assessment; Remedies of the Association. If any installment of an assessment is not paid within thirty (30) days after the same is due, the entire unpaid balance of the assessment will immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

(a) If any installment of an assessment is not paid within thirty (30) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule (or if the Board fails to establish a rate by rule, at the rate of percent (10%) per annum) (or, if lower, the maximum rate permitted by law), (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, (iii) charge the cost of collection, including attorneys' fees and other out-of-pocket expenses; and/or (iv) cut-off or restrict the services to be provided to the Unit by the Association and the use of the Common Areas (other than the Private Streets [Drives]).

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

(c) 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 attorneys' fees, may be filed with the Recording Office pursuant to authorization given by the Board. The certificate will contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record owner or owners, and the

amount of the unpaid portion of the assessments and charges, and will be signed by an officer or other agent of the Association. For each certificate so filed, the Association will be entitled to collect from the Unit Owner of the Unit described therein a fee of \$400.00, which fee will be added to the amount of the delinquent assessment and the lien on the Unit.

(d) The lien provided for herein will become effective from the time a certificate of lien was duly filed therefor, and will 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.

(e) Any Unit owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the District Court of Johnson County, Kansas for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court may make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(f) Each such assessment together with interest, late fees, and costs, including attorneys' fees, will be the joint and several personal obligations 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 or Owners personally obligated to pay the same, and an action to foreclose a lien. In any foreclosure action, the Unit Owner or Owners affected will be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units will be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) may be added to the amount of any such assessment, to the extent permitted by Kansas law.

(h) No claim of the Association for assessments and charges will be subject to setoffs or counterclaims. 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 will 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.

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

XII.8. 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 individual Unit assessments) will be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, will 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, in the case of foreclosure, to the date of the court order authorizing the sale, and, in all other cases, to the date of the deed vesting legal title in the successor owner. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter. If the Unit Owner subsequently redeems the Unit from the foreclosure sale, the lien hereunder will automatically be reinstated retroactively in full.

XII.9. Certificate Regarding Assessments. The Board may, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate will be conclusive evidence of payment of any assessment therein stated to have been paid.

XII.10. Capital Contribution Fee and Processing Fee. Upon the closing of the sale of any Unit, and upon closing of any resale of any Unit, the Unit Owner will pay to the Association (or as otherwise directed by the Board) a Capital Contribution fee of \$500.00 and an Processing fee of \$250.00, or such amounts determined by the Board. The fees will be in addition to the first regular monthly assessment (Dues).

ARTICLE XIII. CONDEMNATION

Each Unit Owner, by accepting title to a Unit, grants to the persons who constitute the Board an irrevocable power of attorney, coupled with an interest, to conduct negotiations with the State, a political subdivision thereof or any other corporation, agency or authority having the power of eminent domain that seeks to acquire any of the Townhome Property. In such event, the Association will 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 may allocate such consideration, to the extent possible, to the repair, replacement or restoration of the condemned Common Areas and then to the Unit Owners and their respective mortgagees, as their interests may appear, in proportion to their respective undivided interests in the Common Areas. In the event negotiations fail, the condemning authority may join the Association as a party defendant in lieu of naming all Unit Owners and such proceedings will bind all Unit Owners; however, any Unit 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 Unit Owner and the holder of mortgages on the Unit will 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 will 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. AMENDMENTS

XIV.1. Power to Amend. Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration will require the consent of at least two-thirds (2/3rds) of the Class A members and approval by the Class B member. Notwithstanding the foregoing:

(a) The consent of Unit Owners of at least seventy-five percent (75%) of the Class A members and approval by the Class B member will be required to terminate the Townhome and this Declaration.

(b) The Association will not be permitted to be dissolved or permitted to dispose of the Private Streets by sale or otherwise (except to a new entity or agency assuming all of the duties and obligations of the Association) without first offering to dedicate the Private Streets to the City or any other government agency.

XIV.2. Method to Amend. An amendment to this Declaration, adopted with the consents of Unit Owners, may be executed with the same formalities as to the execution of this Declaration by two officers of the Association and will contain their certification that such amendment was duly adopted in accordance with the provisions of this Article. Any amendment duly adopted and executed in accordance with the foregoing provisions will be effective upon the filing of the same with the Recording Office.

XIV.3. Form of Consent of Owners. The consent of Unit Owners to any amendment of this Declaration may be obtained in the form of written consent(s) executed by two thirds (2/3rds) of all of the Class A members or in the form of a formal resolution approved by two thirds (2/3rds) of all of the Class A members at a duly held meeting of the members.

ARTICLE XV. GENERAL PROVISIONS

XV.1. Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby will run with and bind the real property, and each part thereof, and will 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.

XV.2. Enforcement. In addition to any other remedies provided in this Declaration, the Association, and each Unit Owner, will 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 Association or by any Unit Owner to proceed with such enforcement will in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge.

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

(b) To the extent permitted by law, if the Association is successful in obtaining a judgment or consent decree in any court action, then the Association will be entitled to receive from the party breaching this Declaration as part of the judgment or decree the reasonable legal fees and expenses incurred by the Association with respect to such action, including without limitation attorneys' fees.

XV.3. Severability. Invalidity of any one or more of these covenants, conditions, restrictions or easements by judgment or court order will in no way affect any other provisions, which provisions will 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 will prevail and the conflicting language will be deemed to be invalid and void, provided that such invalidity will in no wise affect any other provisions of this Declaration, which provisions will remain in full force and effect. This Declaration will 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.

XV.4. Gender and Grammar. The singular wherever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, will in all cases be assumed as though in such case fully expressed.

XV.5. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date set forth above.

EMC DEVELOPMENT, LLC,
a limited liability company

By: 
Richard Rhodes, Manager

STATE OF KANSAS, COUNTY OF JOHNSON, ss.:

On this 27 day of Sept, 2022, before me, a Notary Public in and for said state, personally appeared Richard Rhodes, Manager of **EMC DEVELOPMENT, LLC**, a Kansas limited liability company, and stated that the within instrument was signed and sealed in behalf of said limited liability company by authority of its members, and acknowledged said instrument to be the free act and deed of said limited liability company for the purposes therein stated.

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

Christina M. Lawson
Notary Public

My Commission Expires:

8-30-25



EXHIBIT A
LEGAL DESCRIPTION OF TOWNHOME PROPERTY

Lots 1 through 30, inclusive, and Tracts A, B, C and D, ENCLAVE OF MILL CREEK, a subdivision in the City of Shawnee, Johnson County, Kansas.

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, RESTRICTIONS,
ASSESSMENTS AND EASEMENTS**

ENCLAVE OF MILL CREEK

This First Amendment to Declaration of Covenants, Restrictions, Assessments and Easements for the Enclave of Mill Creek (the "Amendment") is made and entered into as of this ____ day of March, 2023, by EMC Development, LLC, a Kansas limited liability company (hereinafter referred to as "Developer").

A. WHEREAS, Developer executed that certain Declaration of Covenants, Restrictions, Assessments and Easements for the Enclave of Mill Creek dated December 16, 2021 and recorded in the office of the Register of Deeds of Johnson County, Kansas on September 29, 2022 at Book 202209, Page 007209 (as amended and supplemented from time to time, the "Declaration") encumbering certain real property described therein and set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

B. WHEREAS, Developer is the Class B Member and there are no Class A Members; and

C. WHEREAS, Developer desires to amend the Declaration as set forth herein.

NOW THEREFORE, in consideration of the premises, the Developer hereby declares for itself and its successors, grantees and assigns:

1. Except as specifically set forth herein, all capitalized terms shall have the same meanings as set forth in the Declaration.

2. Article IV of the Declaration is hereby amended to add a Paragraph IV.17 as follows:

IV.17 (d) Outdoor Cooking. No outdoor cooking shall be conducted on the Property except in grills, and only natural gas or propane may be used as a fuel. The use of charcoal, wood or wood products is prohibited.

On above-ground porches, grills shall be placed away from sprinkler heads or monitors to avoid activation. Outdoor cooking is prohibited on above-ground porches enclosed with screen, shades, drapes or glass on any exposure.

3. To the extent inconsistent with this Amendment, the Declaration is hereby superseded; as amended by this Amendment, however, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, Developer has executed this document as of the first day and date stated above.

EMC DEVELOPMENT, LLC, a Kansas
limited liability company

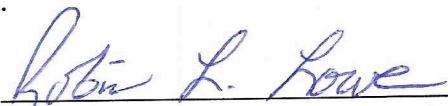
By: 
Linden Rhodes, Manager

STATE OF KANSAS)
) ss.

COUNTY OF JOHNSON)

On this 7 day of March, 2023, before me, a Notary Public in and for said state, personally appeared Linden Rhodes, who stated that she is the Manager of EMC Development, LLC, a Kansas limited liability company, known to me to be the person who executed the within instrument on behalf of said company and acknowledged to me that she executed the same for the purposes therein stated.

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


Notary Public

My Commission Expires:

4-13-26

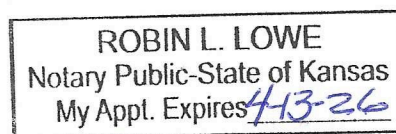


Exhibit A

Lots 1 through 30, inclusive, and Tracts A, B, C and D, ENCLAVE OF MILL CREEK, a subdivision in the City of Shawnee, Johnson County, Kansas.

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS, RESTRICTIONS,
ASSESSMENTS AND EASEMENTS**

ENCLAVE OF MILL CREEK

This Second Amendment to Declaration of Covenants, Restrictions, Assessments and Easements for the Enclave of Mill Creek (the "Amendment") is made and entered into as of this 18 day of March, 2023, by EMC Development, LLC, a Kansas limited liability company (hereinafter referred to as "Developer").

A. WHEREAS, Developer executed that certain Declaration of Covenants, Restrictions, Assessments and Easements for the Enclave of Mill Creek dated December 16, 2021 and recorded in the office of the Register of Deeds of Johnson County, Kansas on September 29, 2022 at Book 202209, Page 007209 (as amended and supplemented from time to time, the "Declaration") encumbering certain real property described therein and set forth on Exhibit A, attached hereto and incorporated herein by reference (the "Property"); and

B. WHEREAS, Developer is the Class B Member and there are no Class A Members; and

C. WHEREAS, Developer desires to amend the Declaration as set forth herein.

NOW THEREFORE, in consideration of the premises, the Developer hereby declares for itself and its successors, grantees and assigns:

1. Except as specifically set forth herein, all capitalized terms shall have the same meanings as set forth in the Declaration.

2. Article IV, Paragraph 8 of the Declaration is hereby amended to read as follows:

IV.8 Renting, Leasing, Signs. No Unit or part thereof may be rented or leased except on the following conditions: (a) the lease or rental agreement shall be in writing and the tenant shall be no more than two (2)

natural persons; (b) the lease or rental term can be no less than six (6) months; (c) the Unit Owner cannot be delinquent on the payment of assessments at the time of rental; (d) no less than the entire Unit may be rented or leased; (e) the lease or rental agreement must commit the tenant to abide by this Declaration and be liable for damage to Common Areas; (f) while a Unit is leased or rented, the owner of the Unit shall not be entitled to use the Common Areas; and (g) the lease or rental agreement shall contain the contact information of the tenant and a copy thereof submitted to the Board. The Board may promulgate additional rules and regulations governing leases and rentals which will be binding as though set forth herein.

No sign of any kind may be displayed to the public view on the Townhome Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, as approved by the Board; (b) in the yard immediately in front of the Unit, a sign advertising the Unit for sale; or (c) with the specific written approval of the Board. IV.17 (d)

3. To the extent inconsistent with this Amendment, the Declaration is hereby superseded; as amended by this Amendment, however, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, Developer has executed this document as of the first day and date stated above.


EMC DEVELOPMENT, LLC, a Kansas
limited liability company

By: 
Linden Rhodes, Manager

STATE OF KANSAS)
) ss.
 COUNTY OF JOHNSON)

On this 28 day of March, 2023, before me, a Notary Public in and for said state, personally appeared Linden Rhodes, who stated that she is the Manager of EMC Development, LLC, a Kansas limited liability company, known to me to be the person who executed the within instrument on behalf of said company and acknowledged to me that she executed the same for the purposes therein stated.

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


 Notary Public

My Commission Expires:

11/22/2025



Exhibit A

Lots 1 through 30, inclusive, and Tracts A, B, C and D, ENCLAVE OF MILL CREEK, a subdivision in the City of Shawnee, Johnson County, Kansas.