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AMENDED AND RESTATED
DECLARATION OF COVENANTS,
RESTRICTIONS, ASSESSMENTS AND EASEMENTS
OF
THE VILLAS OF ASBURY

(Final Revision: June 2, 2014)

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AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS,
ASSESSMENTS AND EASEMENTS OF
THE VILLAS OF ASBURY

This is the Amended and Restated Declaration of Covenants, Restrictions, Assessments and Easements of The Villas of Asbury originally made as of the 31st day of May, 2002, and restated on 18th day of Sept, 2014, pursuant to the provisions of K.S.A. §58-3701 *et seq.* (The “Townhome Act”) and K.S.A. §58-4601 *et seq.* (The “Uniform Common Act”).

Recitals:

- A. Ewing 3 Development, L.L.C., a Kansas limited liability company, (“Original Declarant”), was the owner in fee simple of certain lots and common areas which constitute a portion of the “Townhome Property”, more specifically designated on Exhibit “A”.
- B. B.L. Rieke Villas, L.L.C., a Kansas limited liability company, (“Original Additional Land Owner”) was the owner in fee simple of certain lots which constitute a portion of the “Townhome Property”, more specifically designated on Exhibit “A”.
- C. The Original Declarant created on 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.
- D. Unit Owners desire to restate; turnover has occurred.

Definitions:

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

“Additional Land Owner” means new unimproved lot owner.

“Articles” and “Articles of Incorporation” mean the articles of incorporation, filed with the Secretary of State of Kansas, incorporating the Association as a Kansas not-for-profit corporation, 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 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.

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

“City” means the City of Olathe, 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. Without limitation Common Areas includes the above property, the Pool Area and Other Common Areas.

“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.

“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.

“Improvements” means anything amending the original Unit structure design, as defined by the building plans, which may or may not increase the value of the Unit.

“Lot” means any lot or subdivision or split thereof as shown as a separate building 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.

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

“Original Additional Land Owner” means B. L. Rieke Villas, L.L.C., a Kansas limited liability company.

“Original Declarant” means Ewing 3 Development, L.L.C., a Kansas limited liability company, and its successors and assigns.

“Other Common Areas” may include, but are not limited to recreational facilities such as retention pond, horseshoe pit, and walking trail, if any.

“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.

“Pool Area” has the meaning set forth in Article VI, Section 3 below.

“Pool District” means Townhome Property and all such additional areas which may be added by the Association to enjoy the benefits of the Pool Area and share in the cost of the same.

“Private Street” means all streets and 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.

“Recording Office” means the Office of the Register of Deeds of Johnson County, Kansas.

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

“Townhome Act” means K.S.A. §58-3701, *et seq.*, which is commonly known as the Kansas Townhome 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 (also known as the Governing Documents).

“Townhome Property” means the tract 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.

“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.

“Uniform Common Act” means K.S.A. §58-4601, *et s.eq*, which is commonly known as the Kansas Uniform Common Interest Owners Bill of Rights Act.

“Unit Owner(s)” means that person(s) owning a Unit in fee simple.

“Upgrades” means items chosen by a home owner to install on their property in addition to or in place of the original building structure.

The Plan

NOW, THEREFORE, the Board of Directors and Association and Unit Owners hereby subject all of the Townhome Property to the amended and restated covenants, restrictions, assessments and easements hereinafter set forth and hereby submit the Townhome Property to the provisions of the Townhome Act and Uniform Common Act and make and establish the following plan for the Townhome Property.

ARTICLE I THE LAND

The legal description of the land constituting the Townhome Property, located in the City of Olathe, Johnson County, Kansas, is attached hereto as Exhibit A.

ARTICLE II NAME

The name by which the Townhome Property shall be known as “The Villas of Asbury.”

ARTICLE III PURPOSES; RESTRICTIONS

1. Purposes: This Declaration establishes separate individual parcels from the Townhome Property to which fee simple interests may be conveyed; creates 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; establishes a “Unit Owners” association to administer the Townhome and 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.
2. Restrictions: The Townhome and the Townhome Property shall be benefitted 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. 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. The following activities are considered customarily incidental to residential use and are not in violation of these restrictions: an occupant keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit.

- b. Common Area Uses: The Common Areas shall be used in common by all Unit Owners, Occupants, 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 shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants.
- c. Unit Exterior:
- i. Nothing shall be permitted to be hung or displayed on the outside of windows or placed on the outside walls of a building or otherwise outside of a Unit, except upon prior written consent by The Villas of Asbury Homeowners Association as adopted by the Board. Window treatments, interior drapes, curtains, or louvered blinds which, from exterior observation, shall be neutral in color, white, beige or gray.
 - ii. No awning, canopy, shutter, or any other similar object shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window.
 - iii. No outside antenna, satellite dish, or other device for the reception or transmission of radio or television or other communication signals shall be erected or maintained on any Lot or upon the exterior of any Unit, without prior written approval of the Board, and then only in such places and under such conditions as are expressly authorized by the Board. The Board 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 owners and occupants. In the event these limitations, or any part thereof, are deemed unlawful, the Board reserves 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, wind chimes, security alarm or other sound device shall be located, installed or maintained upon the exterior of any Unit or in any yard, except voice intercoms and devices used exclusively for security purposes.
 - v. No artificial plants or flowers, trees or other vegetation shall be permitted on the exterior of any Unit or in the yard. No bird baths shall be permitted. No statues or other lawn art shall be permitted on the exterior of any Unit or in any yard without the prior written consent of the Board or as may be permitted by rules, regulations, and policies adopted by the Board. No lawn art may obstruct or interfere with the maintenance activities of the Association. 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 Unit. 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 by written consent of the Board or as may be permitted by rules, regulations and policies adopted by

the Board.

- 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 clothesline shall be erected upon, moved onto or maintained upon any Lot. Any animal house must be located within the fenced-in 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. The Board may approve an estate sale upon request.
 - ix. No fences (including invisible animal fences) shall be permitted on any Lot, except as may be constructed around a patio with the express written consent of the Board. No decorative fences shall be permitted in grass, landscaped beds, rock beds or egress areas.
 - x. No flags or flagpoles shall be permitted on any lot except flagpoles attached to the Unit. Said flagpole shall be no longer than six feet, and no flag shall be larger than three feet by five feet. Only U.S., State or holiday/seasonal/ sports flags are approved.
- 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.
- e. Trash: No outdoor burning of trash, grass or construction material shall be allowed on any Unit or Common Area. Trash shall be maintained in a garbage can or the provided receptacle. No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a residence, except the evening before or upon the day of scheduled trash collection. Trash receptacles are to be placed at the end of a driveway. The Board shall have the right to maintain construction dumpsters at locations selected by it. If recycle containers are required by local law, they shall be subject to the same restrictions as trash containers.
- f. Garages, Parking 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.
 - iii. Operating, Licensed Passenger Vehicles:
 - a) No overnight parking of any motor vehicle, trailer or similar apparatus of any type or character is allowed on any street with a curb and gutter within the Townhome Property. This is to allow emergency vehicles access to residential units. The following streets are within the community and subject to the parking restrictions: Annie St., Church St., Hillside Dr., Sunset Dr., 156th Terr., 157th Terr., 158th Terr., 158th Pl.
 - b) Only a street operable automobile, passenger van, or small truck, shall be left or stored overnight on the Townhome Property. (See clause f-iv –

Heavy Vehicles for further information)

- c) The blacktop area coming off the street to the residential unit is a driveway. The blacktop extension beyond the last concrete driveway is considered designated off street parking. These blacktop extensions may be used for overnight parking. The driveway portion of the blacktop may not be used for parking to allow for emergency vehicle access. All blacktop areas are subject to damage especially during extremely hot weather, therefore no vehicle or apparatus as described above, exceeding 8,000 lbs, shall be left parked on any blacktop area, except as permitted in clause (iv) below.
 - d) The primary overnight parking for residents should be their garage. The next area would be the concrete driveway in front of their garage. The last area of preference would be the blacktop extensions of the driveways. Residents also have the option of using the clubhouse parking lot (a blacktop area subject to weight limits) and city owned streets for overnight parking. City owned streets in the community include: Brentwood St. and 157th St.
 - e) No motor vehicle shall be parked in any designated off-street parking area for more than 48 consecutive hours.
- iv. Heavy Vehicles:
- a) Trucks or other vehicles exceeding a gross vehicle weight of 8,000 lbs are prohibited in the Townhome Property except during such limited time as such truck or vehicle is actually being used during working hours in the Townhome Property for its specific purpose.
 - b) Recreational vehicles of any type or character are prohibited except:
 - (1) Storing in an enclosed garage,
 - (2) Temporary parking on the driveway for the purpose of loading and unloading (maximum of one overnight every 14 days), or
 - (3) With prior written approval of the Board.
 - c) When possible, vehicle(s) should be parked in the center of a drive to evenly distribute weight.
- v. The Board may enforce the foregoing restrictions by levying enforcement charges, assessing fees for repair/replacement of Common Area, having such vehicles towed away at the expense of the Unit/vehicle owner, and/or taking such other lawful actions as it, in its sole discretion, deems appropriate.
- g. Renting and Leasing:
- i. No Unit or part thereof shall be rented or used for transient or hotel purposes, defined as:
 - a) rental of less than one month duration or under which occupants are provided customary hotel services such as room service for food or beverages, maid service, laundry/linen service, busboy service, and similar services; or
 - b) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only.

- ii. No lease may be of less than an entire Unit. Any lease agreement shall be in writing, shall require that the tenant and all 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 shall provide that failure by the tenant to comply with the terms of these documents shall be a default under the lease. After such default, the Association shall be enabled to request The Unit Owner to evict the lessee for such default and the Unit Owner shall initiate the eviction procedure immediately upon such request, duly complying with any applicable statute.
 - iii. Prior to the term of a lease, the Unit Owner shall notify the Association, in writing, of the name(s) of the tenant(s), the relationship to the Unit Owner, if any, and the time during which the lease term shall be in effect, and provide the Management Agent with a copy of the lease application, and criminal background check 30 days prior to the tenant occupying the property. During the term of a lease, the lessee, but not the Unit Owner, shall be entitled to the use of the Common Areas and facilities.
 - iv. The Association limits the number of Units that are leased. The desired limit is five (5) percent of the total completed Units in the Villas of Asbury. When the five (5) percent maximum is reached, the Association may grant an exception by the written consent of the Board. Any owner wanting to rent their Unit will be placed on a list, prioritized by the date of written notification of the intent to obtain a lessee.
 - v. Notwithstanding the existence of a lease, the Unit Owner shall remain liable for all obligations, including without limitation, the payment of all dues, fines and enforcement charges, under the Townhome Instruments, with respect to the Unit. Any Unit Owner who does not comply with these leasing restrictions shall be subject to daily fines until the required written lease and tenant information is provided. Nothing in this provision shall serve to prohibit a Unit Owner who leases his/her Unit prior to the adoption of this amended Declaration from continuing to lease their Unit. All such owners shall be grandfathered so as to exempt those Units from the rental cap imposed by this provision so long as they own his/her Unit. Any sale or transfer of such Unit shall then subject that Unit to all provisions of The Villas of Asbury Homeowners Association governing documents.
- h. Signs: No sign of any kind shall be displayed to the public view on the Townhome Property except:
- i. on the Common Areas, signs regarding and regulating the use of the Common Areas, as approved by the Board;
 - ii. standard real estate signs (no more than two) for the sale or lease of Units placed on said property by the Unit Owner no larger than two feet by four feet in size;
 - iii. with the specific written approval of the Board.

Any "for sale" or "for lease" signs must display correct contact information.

No political signs shall be allowed, except those permitted by state law. If these limitations on the use of signs, or any part thereof, are determined to be unlawful, the Board reserves the right to regulate the use of signs in a manner not in violation of law.

- i. Maintenance and Replacements: Except for the specific items listed as an Association responsibility in Article VIII, Section 1, each Unit Owner shall properly maintain the owner's Unit in a neat, clean and orderly fashion and in good condition and repair at all times. Replacements of all or any portion of a completed structure because of age, casualty loss or other reason shall 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. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of 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. Construction in Easements: No structure, planting or other material shall 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, 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 shall 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.
- l. 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. A Unit resident will not be allowed to house more than four (4) domestic animals in their Unit
 - ii. Pit Bulls, Dobermans or other dog types with vicious propensities are not allowed as residential pets;
 - iii. the maintaining of animals shall be subject to local law and 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
 - iv. the right of an 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(s) constitutes a nuisance or creates a detrimental effect on the Townhome or other Units or occupants.

All pets shall be confined to the Lot of the Owner except when on a leash controlled by a responsible person. Owners shall immediately clean up after their pets on all streets, Common Areas, areas owned by others and their own Lot.
- m. 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 hereof. The rights in the Common Areas shall 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, 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 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 shall notify the Association, in writing, within five (5) business days after an interest in that Unit Owner's Unit has been transferred to another person.

- n. Discrimination/Handicapped Accommodation: No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit Owner in favor of another. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board 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.
- o. Landscaping: No landscaping (other than trees and landscaping installed by or for the Association and flowers installed by the Unit Owner) shall be installed or maintained in any yard or next to any residence, without the express written consent of the Board. Following the completion of construction of any Unit, no significant landscaping change shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing by the Board.
- p. Architectural Control: Following the completion of construction of any Unit, no exterior addition or alteration shall be made thereto unless and until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board. However, no such approval of the Board shall be required for a builder to construct the Units and Common Areas as previously approved and filed by the city per the original development guidelines.
- q. Rules and Regulations: In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit Owners, as a whole, and the Association, and to protect and preserve the nature of the Townhome and the Townhome Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the each Unit Owner thirty (30) days prior to the time when the same shall become effective.
- r. Fines and Other Enforcement: The Board may enforce all of the foregoing restrictions, rules and regulations by levying 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.

ARTICLE IV
IMPROVEMENT DESCRIPTIONS

1. Residential Buildings: The residential buildings are of traditional architectural style, of one story, with or without basements, and one or two car garages. These buildings are of wood frame construction, with brick, stone or stucco and wood siding, and composition shingle roofs. The principal materials of which these buildings are constructed are wood, glass, concrete, brick, 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 immediately in front of the attached garage which is part of that Unit.
2. Common Areas: The Common Areas include a community building built of similar architectural style and similar materials as the residential buildings, a parking lot, a swimming pool, retention pond, walking trail, and/or other recreational facilities as approved by the Board.

ARTICLE V
UNITS

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 on which that Unit is located.
2. Unit Composition: 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:
 - a. The portion of the building and improvements located within the boundaries of the Lot;
 - b. All fixtures and appliances installed for the exclusive use of that Unit, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, stoves and hoods, gas furnaces, hot water heaters, heat pumps, and/or air conditioning units (even though located outside the boundaries of the Unit), and components of the foregoing if any;
 - c. All plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; and
 - d. The driveway, lawn, and the landscaping that are within the Lot boundary.
3. Party Walls: Each wall which is built as a part of the original construction of the Units upon the Townhome Property and 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 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 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.

ARTICLE VI
COMMON AREAS

- 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, are Common Areas. The Common Areas are also described, in part, in Section 2 of Article IV.
- 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 in the "common expenses" as allocated among all of the Units on an equal basis per 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 it appertains.
- 3. Pool Area: The swimming pool, parking lot, and community building facilities are known as the Pool Area. The Pool Area and its facilities are available for use by residents of the Townhome Property. The Association expressly reserves the right to make the Pool Area available to neighboring subdivision(s), at a fee determined by the Association Board, and the following shall apply:
 - a. The Association shall cause property and liability insurance to be continuously maintained on the Pool Area.
 - b. The Association shall pay all operating and capital expenses relating to the Pool Area out of the assessments collected from the Owners of the Units and approved neighboring subdivision(s).
 - c. All Unit and neighboring subdivision owners/residents must abide by the rules, guidelines, and policies as set forth by the Board.
- 4. Other Common Areas: Other Common Areas may include, but are not limited to recreational facilities such as retention pond, horseshoe pit, and walking trail.

ARTICLE VII
HOMEOWNERS ASSOCIATION

- 1. Establishment of Association: The Association has been formed to be and to serve as the Unit Owners' association of the Townhome.
- 2. Membership and Voting Rights: There shall be one class of membership which shall consist of the Unit Owners and every such owner shall be a member. Each member shall have one vote for each Unit for which they are the owner. Subject to the foregoing, the Board shall be the sole judge of the qualifications of each Unit Owner to vote and their rights to participate in

its meetings and proceedings. The Board, from time to time, may suspend the right of a member to vote.

3. Board of Directors: The affairs of the Association shall be managed by a Board of Directors composed of five (5) Directors.

4. Authority of Board: The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and the exterior portions of the Units and assess and collect funds for the payment thereof. The Board shall exercise all rights provided by the Townhome Instruments, or the Townhome Act, that is not specifically reserved to Unit Owners. 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. This right of enforcement does not serve to prevent waivers, changes, releases or modifications of such "restrictions, et al" from being made by the Association or other parties having the right to make such changes under the terms of the deeds, declarations or plats in which such "restrictions" 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 owner of an unimproved lot or any Unit from enforcing any building, use or other restrictions in its or his/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 (if applicable), 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 other parties regarding the performance of services and matters benefitting the Association and its members.
 - f. To enter into and perform agreements with 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 relating thereto, including, but not limited to the Pool District.
 - 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 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 the Articles of Incorporation or Bylaws of the Association or this Declaration.
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 shall be terminable by the Association for cause on no more than thirty (30) days' written notice; shall be terminable by either party without cause and without penalty, on no more than ninety (90) days written notice; shall not exceed one year unless renewed by agreement of the parties for successive one-year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing.
6. Limitation of Board Authority: All Board authority shall be subject to the provisions of the Uniform Common Act and the Townhouse Act.

ARTICLE VIII MAINTENANCE AND REPAIR

1. Association Duties and Responsibilities: The Association shall repair, replace and maintain in good condition at all times all improvements constituting a part of the Common Areas and only perform Unit exterior maintenance, repair and replacement of the following items:
- a. Drainage and grading;
 - b. Driveway repair and replacement on any portion of the concrete drive to the boundary of the Owner's Lot as evidenced by the Lot survey.
 - c. Landscaping and lawn care consisting of edging, fertilizing, mowing, mulching, with removal of leaf and lawn debris, dead vegetation (excluding flowers), trimming of all bushes and trees in common areas and on lots (not to include the care of any areas in the

fenced in or enclosed patio area of any Unit or in any area made inaccessible to the Association), watering and weed control of grass areas, landscaped beds and rock areas. Removed vegetation will be replaced at the discretion of the Board.

- d. Mailboxes and mailbox stands;
- e. Painting of exterior painted surfaces (other than areas made inaccessible to the Association), including garage doors, exterior painting and caulking of windows;
- f. Roofs (including but not limited to shingles, flashing, drip edge, valley deterioration, vents), cleaning, painting, repair and replacement of guttering;
- g. Exterior of Unit – brick, stone, stucco, siding, and other such building material;
- h. Sidewalks that do not lead directly to a Unit (including but not limited to 157th Terr., Sunset, 158th Terr., 158th Pl.);
- i. Snow plowing for private streets and driveways, front porches, front sidewalks (not back patios or fenced areas) as soon as reasonably practical, or at Board's discretion, once accumulation reaches two (2) inches or more;
- j. Sprinkler system installation, maintenance, repair, spring start-up and winterization for Common Areas and all lots;
- k. Trash/recycle collection for each Unit unless provided by any governmental authority. The Association shall not be obligated to provide recycling services unless required by local law and then at the cost of each and every Unit Owner;
- l. Utility trunk and branch lines, all common sewer lines within the Townhome Property (including without limitation, all sanitary sewer service lines from the applicable manhole to the entry point into the applicable building).

The Board, at its discretion, shall determine the scope and timing of the foregoing services and functions of the Association and shall establish, maintain and expend reserve funds for such future services and functions. The Board, at its discretion, may provide other exterior maintenance services for the Units that are not part of the required services described above.

2. Individual Unit Owner Responsibilities: The Unit Owner shall repair, replace and maintain in good condition at all times any portion of the his/her Unit not specifically assumed by the Association including without limitation the following items:

a. Interior: includes repair, replacement and maintenance in good condition at all times, the interior of the Unit (outside walls inward) and all components thereof, including but not limited to the following items:

- i. appliances, plumbing fixtures, electrical fixtures, smoke detectors;
- ii. windows and screens, doors, screen doors, storm doors, garage doors, including the frames, sashes, jambs, threshold and all related hardware, lubrication, openers, skylights.

b. Exterior: except for those specific items listed as an Association responsibility in Article VIII, Section 1, each Unit Owner shall repair, replace, and maintain in good condition at all times, the exterior of the Unit and related improvements, including but not limited to the following items:

- i. concrete driveway within the boundary of the owner's Lot;

- ii. concrete pads, air conditioning/furnace units, heat pumps, sump pumps, chimneys, flues and all exterior lighting (whether or not within the Unit boundary), dryer vents;
- iii. landscape replacement and watering on Unit Owner's lot that is within five (5) feet from the foundation of the Townhome residence, all ground inside any fenced or enclosed area and timely removal of dead plants installed by the Unit Owner. This requirement is intended to supplement the sprinkler system and lawn care services provided by the Association;
- iv. patios, porches, (including concrete, brick, and other materials), fences and gates, wood, glass or other enclosures, foundations (including foundation leaks), basement walls, decks, sidewalks leading directly to the Unit, flooring, supports, safety rails, wrought iron rails;
- v. pest control to discourage pests, report infestations to the Association and control infestations inside and outside the Unit;
- vi. snow removal under two (2) inches, any ice removal at owners discretion, using a method that will not cause damage;
- vii. television cable services, satellite dishes;
- viii. trash receptacles and recycling bins as required by local law and/or trash contractor shall be placed and maintained per Article III, Section 2e, the cost of replacement items to be paid by Unit Owner;
- ix. windows, window wells (concrete and metal) and any allowed window well covers, skylights, if any.

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 (including, without limitation, any trunk or branch utility or sewer line) is caused by the negligent or intentional act of any Unit Owner or Occupant, or is the result of the failure of any Unit Owner (including his/her 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.

If the cost of such repair or maintenance described above is not covered by the Association's insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit Owner's Unit and on the 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.

Except to the extent that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair the interior of any Unit, or component thereof, or personal property within any Unit. Furthermore, the Association shall not have responsibility for the repair of any damage caused by the gross negligence or misconduct of a person. Such repair shall be the responsibility of the Unit Owner.

ARTICLE IX UTILITY SERVICES

By acceptance of a deed to a Unit, each Unit Owner agrees to pay for utility services (excluding water) separately metered or separately charged by the utility company to that Unit, and

to reimburse the Association for that Unit Owner's share of any utility cost that the Board reasonably determines is attributable to use by that owner's Unit. All other utility costs shall be common expenses and paid by the Association.

ARTICLE X
INSURANCE; LOSSES

1. Fire and Extended Coverage Insurance: The Board shall obtain and maintain for all buildings, 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 fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Townhome Property, or, if the policy does not include an "all risks" endorsement, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent 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 current insurable replacement cost of such items (exclusive of land, foundations, and excavations).

This insurance shall also:

- a. provide coverage for the Units and including all improvements and upgrades; fixtures, appliances, floor coverings, walls and cabinetry that are similar in kind and quality conveyed by the developer to the original owner. Coverage is limited to the original plans and specifications. Any individual unit improvements made subsequent to the original conveyance such as new or additional interior walls, upgraded floors or floor covering, wall treatments, appliances, cabinetry etc. are not covered by the master policy. These improvements are the responsibility of the Unit Owner to insure;
- 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 there under 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;
- e. contain a waiver of subrogation of rights by the carrier as to the Association, its officers and directors, and all Unit Owners;
- f. provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners; and
- g. be primary, even if a Unit Owner has other insurance that covers the same loss.

The Unit Owner shall be responsible for their share of the premium through their monthly

Association dues and shall be responsible for the deductible under the Association's insurance on any property damage or casualty loss to their Unit. The amount of such deductible shall be uniform for all Units and shall be set by the Board from time to time in a reasonable amount.

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, public ways 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, and shall include, without limitation, coverage for legal liability of the insured's 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.
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.
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:
 - a. "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports
 - b. "A" or better general policyholder's rating and a financial size category of "VII" or better in Best's Insurance Reports-International Edition
 - c. "A" or better rating in Demotech's Hazard Insurance Financial Stability ratings
 - d. "BBB" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review
 - e. "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service.

Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings, mentioned above.

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.

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, and the Association, and the Townhome, runs with the land, and is coupled with an interest. The Association has the option but not the obligation to exercise this Power and shall not be subject to any claims or liable for any damages of any kind whatsoever arising out of the exercise and non-exercise of such option.
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. Each Unit Owner or occupant shall carry such insurance, in addition to that provided by the Association pursuant hereto, as that Unit Owner or occupant may determine, subject to the provisions hereof, and provided that no Unit Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the blanket insurance carried pursuant hereto by the Association. In the event any Unit Owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. All such insurance separately carried 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.
8. Sufficient Insurance: In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall 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, shall elect not to make the repair, restoration or reconstruction, then such repair, restoration or reconstruction shall not be undertaken.
9. Insufficient Insurance: In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the 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 at the expense (to the extent not covered by insurance) 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 shall be assessed against the Unit of such Unit Owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

10. Election Not to Restore: The Association may, with the written consent of all Unit Owners and their first mortgagees, both given within seventy-five (75) days after 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), in the proportions of their interests in the Units.
11. Limit of Liability: The Association, nor its directors, officers, or other representatives, shall not be liable to any Unit Owner or occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit Owner, occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortuous act of the Association or such director, officer, or other representative.

ARTICLE XI GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

1. Easements of Enjoyment; Limitations: Every Unit Owner shall have a right and easement;
 - a. for ingress to and egress from such owner's Lot and Unit over and across all of the Private Streets,
 - b. of enjoyment in, over and upon the Common Areas, and
 - c. an unrestricted right of access to and from his, her or its Unit, 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.

2. Right of Entry for Repair, Maintenance and Restoration: In the event of an emergency involving a Unit or adjoining Unit(s), the Association's right of entry to a Unit may be exercised without notice and appropriate authorities will be notified. The Association has the option but not the obligation to enter and shall not be subject to any claims or liable for any damages of any kind whatsoever arising out of the exercise and non-exercise of such right.
3. Easements for Encroachments: Each Unit and the Common Areas shall be subject to and benefitted by easements for encroachments on or by any other Unit and upon the Common Areas created or arising by reason of overhangs; or 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.

4. Easement for Support: Every portion of a building, utility line, or any improvement on any portion of the Townhome Property contributing to the support of another building, utility line or improvement on another portion of the Townhome Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Townhome Property.
5. Easements for Proper Operations: Easements in favor of the Association shall 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, electricity, security systems, master television antennas 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 shall be expressly permissible for the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to 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 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 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 owners and occupants.
6. Easement for Services: Non-exclusive easements are hereby granted to all police officers, firemen, ambulance operators, mail and delivery personnel, garbage and trash removal personnel, all similar persons, 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.
7. Power of Attorney: Each Unit Owner (including any unimproved lot owner), 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 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 power 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. The Association has the option but not the obligation to exercise this Power and shall not be subject to any claims or liable for any damages of any kind whatsoever arising out of the exercise and non-exercise of such option.

8. 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.

ARTICLE XII

ASSESSMENTS AND ASSESSMENT LIENS: RESERVE FUNDS

1. Types of Assessments: Each Unit Owner shall be obligated, and by acceptance of a deed to a Unit (whether or not it shall 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 individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.
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.
3. Elements-Apportionments; Due Dates:
 - a. Annual Operating Assessments Payable Monthly – Asbury Villas:
 - i. Annually, in advance where practical, the Board shall estimate and allocate among all completed Units subject to assessment and their owners on an equal per Unit basis, “common expenses” of the Association, consisting of the following:
 - a) 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 therefore);
 - b) the estimated fiscal year's costs for insurance premiums to be provided and paid for by the Association [except that the costs for the casualty insurance on completed Units allocable (as determined by the Board) to each completed Unit shall be an expense solely of such Unit];
 - c) the estimated fiscal year's costs for utility services not separately metered or charged to Unit Owners;
 - d) the estimated amount required to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;
 - e) an amount deemed adequate by the Board to maintain a reserve for future repairs and replacements to the Private Streets, a reserve for painting of Units, and a reserve for future repairs and replacement of the Units' roofs; and of other responsibilities of the Association enumerated in the Townhome

Instruments, and

- f) the estimated fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.
 - ii. The Board shall thereupon allocate to each Unit subject to assessment on an equal per Unit basis and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.
 - iii. The annual operating 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.
 - iv. If the amounts so collected 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 Units subject to assessment on an equal per Unit basis, and shall become due and payable on such date or dates as the Board determines. The Board will follow the same process for determining the annual operating assessment and for any needed special operating assessment.
 - v. 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.
 - vi. The rate of annual assessment per Completed Unit consists of the annual cost of casualty insurance for each Unit and any other similar assessments chargeable to a particular Unit, including but not limited to, the utility cost of water/sewer and the cost of trash and/or recycling services. The rate of annual assessment upon each Completed Unit may be increased (1) by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year, or (2) at any time by any amount by a vote 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 at such meeting and entitled to vote thereon authorize such increase by an affirmative vote. 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. Annual Operating Assessments – Pool District: At least every two (2) years, the Board will assess Pool Area expenses for owners within neighboring subdivision(s) making up the Pool District, by the end of September that may/may not change accordingly. All property owners making up the Pool District will be provided any change in

assessment by the end of October of new assessment to begin Jan. 1 the following year.

c. 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 therefore 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 therefore 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 sixty percent (60%) of the then existing Units.
- ii. Any such special assessment shall be prorated among all Units on an equal per Unit basis and shall become due and payable on such date or dates as the Board determines.

d. Special Individual Unit Assessments: The Board shall levy assessments against an individual Unit, or Units, and the owner or owners thereof, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of fire and extended coverage insurance, the cost of making repairs plus a reasonable overhead factor which are the responsibility of a Unit Owner, and a Unit Owner's interest, late charges, fines, enforcement and collection charges). Any such assessment shall become due and payable on such date as the Board determines.

e. Defense of Claims: If any 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 owner fails to prevail in such lawsuit, counterclaim or cross claim, 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 cross claim, including reasonable attorneys' fees. Further such recovery right shall constitute a special assessment against the owner's Unit and shall be enforceable against such Unit as provided herein.

4. Effective Date of Assessment: Any assessment created pursuant hereto shall be effective, provided it is created as stated 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.

5. Effect of Nonpayment of Assessment - Remedies of the Association:

- a. If any installment of an assessment is not paid within thirty (30) days after the same is due, the entire unpaid balance of the annual 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 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 ten percent (10%) per annum],
 - ii. charge a reasonable, uniform, late fee, at such rate as the Board, from time to time, establishes by rule,
 - iii. charge the cost of collection, including attorney fees and other out-of-pocket expenses and/or,
 - iv. as allowed by law, withhold or restrict services to be provided to the Unit by the Association and the use of the Common Areas (other than the Private Streets).
- 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 sixty (60) or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that assessment-(including the acceleration 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, the name or names of the record owner or owners thereof, 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 reasonable fee as determined by the Board, which fee shall be added to the amount of the delinquent assessment and the lien on the Unit, unless the Board, in its sole discretion, determines to charge a lesser or greater fee.
- e. The lien provided for herein shall become effective from the time a certificate of lien was duly filed therefore, 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. 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 shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.
- g. Each such assessment together with interest, late fees, and costs, including attorney fees, shall 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.
- h. 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 owner or owners affected shall 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 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.

- i. No claim of the Association for assessments and charges shall be subject to setoffs or counterclaims.
 - j. No owner may waive or otherwise escape 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 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 to continue to provide service, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankruptcy estate.
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 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. 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, shall take the property free of any claims for 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. If the Unit Owner, or its assigns, subsequently redeems the Unit from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter.
7. Certificate Regarding Assessments: The Board shall, 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 shall be conclusive evidence of payment of any assessment therein stated to have been paid.

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 Townhome Property. 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 owners in return for the agreed consideration. The Board shall 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 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 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. In no event shall the Association be liable for any claim or damage arising out of its representation of the Unit Owners in such Condemnation negotiation process.

ARTICLE XIV AMENDMENTS

1. Power to Amend: Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration shall require the consent of Unit Owners owning at least two-thirds (2/3) of the Units, provided however, that the written consent of the City also shall be required for any termination of this Declaration in its entirety or for any amendment, modification or termination of any provision of this Declaration regarding the Private Streets. Notwithstanding the foregoing (except for the provision above relating to the requirement of the City's consent):
 - a. The consent of Unit Owners of at least eighty percent (80%) of the Units and the written consent of the City shall be required to terminate the Townhome and this Declaration; and
 - b. The Association shall have the power to amend the Townhome Instruments, to the extent necessary to cause the Townhome Instruments to comply with the Townhome Act 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.
 - c. The Association shall 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.
2. Method to Amend: An amendment to this Declaration, adopted with the consent 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 foregoing provisions. 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.

3. Form of Consent of Owners: The consent of owners of Units to any amendment of this Declaration may be obtained in the form of written consent(s) executed by two-thirds (2/3) of all of the Unit Owners or in the form of a formal resolution approved by two-thirds (2/3) of all of the Unit Owners at a meeting of the members.

ARTICLE XV
GENERAL PROVISIONS

1. 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.
2. Enforcement: In addition to any other remedies provided in this Declaration, 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 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 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.

To the extent permitted by law, if the Association shall be successful in obtaining a judgment or consent decree in any court action, the Association shall 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.

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 or counterclaim, the Association, Board or individual director, officer or committee member sued by such Unit Owner shall be entitled to recover from such Unit Owner all litigation expenses incurred in defending such lawsuit, counterclaim or cross claim, including reasonable attorneys' fees. Further such recovery right shall constitute a special assessment against the Unit Owner's Unit and shall be enforceable against such Unit as provided herein.

3. 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.

4. 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 either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.
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.

EXHIBIT "A"

LEGAL DESCRIPTION OF TOWNHOME PROPERTY

"Lots 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and Tracts A, B, C, D, F, G, H, I and J THE VILLAS OF ASBURY, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof"

"Lots 1, 2, 3, 4, 9, 25, 26, 27, 28, 29, 30, 31, and 34, THE VILLAS OF ASBURY, a subdivision in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof."

**Amended and Restated Declaration of Covenants,
Restrictions Assessments and Easements of the Villas of Asbury**

This Amended and Restated Declarations of Covenants, Restrictions Assessments and Easements of the Villas of Asbury is made this 18th day of September , 2014 by the Villas of Asbury Homeowners Association, Inc. and its undersign members(hereafter referred to as "Association").

Witnesseth:

WHEREAS, on May 31, 2002, Ewing 3 Development ,L.L.C., a Kansas Limited Liability Corporation("Declarant"), filed that certain Declaration of Covenants, Restrictions Assessments and Easements of the Villas of Asbury, recorded in Official Records Book 7870, Page 350 seq., of the Public Records of Johnson County, Kansas(" Declaration"); and

WHEREAS, effective December 9, 2009, all of the Declarant's rights as set forth in the Declaration; and

WHEREAS, pursuant to Article XIV, Section 1 of the Declaration, the Declaration may be amended at any time by the written consent of at least two-thirds of the Unit Owners of the Association; and

WHEREAS, the Board of Directors has proposed to amend and restate the Declaration in order to incorporate revisions to the state laws governing homeowners associations, to update the method of community governance, to establish a flexible and reasonable procedure to govern owners of residential units and rental property among other things; and

WHEREAS, more than two-thirds of unit owners in the Association consent to amend the Declaration by adopting this Amended and Restated Declaration of Covenants, Restrictions Assessments and Easements of The Villas of Ashbury ("Amended and Restated Declaration") as shown hereto; and

NOW THEREFORE, the Declaration is hereby amended by striking it and all amendments and exhibits thereto in their entirety and substituting in its place this Amended and Restated Declaration.

IN WITNESS WHEREOF, the undersigned officers of The Villas of Ashbury Homeowners Association, Inc. hereby certify that this Amended and Restated Declaration has received the requisite approval pursuant to Article XI of the Declaration this 16th day of October, 2014

THE VILLAS OF ASBURY HOMEOWNERS ASSOCIATION, INC.

By: Sherry S. Heston
(Signature)
Sherry S. Heston
(Printed Name)

Its: President

By: Ricki W. Jameson
(Signature)
Ricki W. Jameson
(Printed Name)

Its: Secretary

State of Kansas

SS:

County of Johnson

I, Cynthia J. Schooley, a Notary Public in and for said county and state, do hereby certify that Sherry S. Heston and Rick W. Jamieson

(Name(s) of Person(s))

personally appeared before me and is (are) known or proved to me to be the person(s) who, being informed of the contents of the foregoing instrument, have executed same, and acknowledged said instrument to be their free

(his, her, their)

and voluntary act and deed and that they executed said instrument (his, her, they)

for the purposes and uses therein set forth.

Witness my hand and official seal this 16 day of October, 19 2014

My commission expires:

7/19/15

Cynthia J. Schooley
Signature of Notary Public

Cynthia J. Schooley
Printed signature if using impression seal.

CYNTHIA J. SCHOOLEY
NOTARY PUBLIC STATE OF KANSAS
MY APPOINTMENT EXPIRES 7/19/15