

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

**FOR LUXE RESIDENCES AT VISTA VILLAGE
A LUXURY VILLA COMMUNITY**

When recorded return to:
Camille Christie
West Star Development
10550 S. Warwick Street
Olathe, Kansas 66061

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LUXE TOWNHOMES**

This Declaration of Covenants, Conditions, and Restrictions for LUXE (the "Declaration") is made as of _____, 2024, by LUXE LLC, a Kansas limited liability company (the "Declarant").

ARTICLE 1

DEFINITIONS

Unless otherwise defined, the following words and phrases when used in this Declaration shall have the meanings set forth in this Article.

"Access Easement Area" means that area identified on the Plat as "Private Access Easement" which provides vehicle and pedestrian ingress and egress to certain Lots across a portion of another Lot.

"Annual Assessment" means the assessments levied against each Lot, and the Owner thereof, pursuant to **Section 6.2** of this Declaration.

"Architectural Committee" means the committee of the Association to be created pursuant to **Section 5.10** of this Declaration.

"Architectural Committee Rules" means the rules and guidelines adopted by the Architectural Committee pursuant to **Section 5.10** of this Declaration, as amended or supplemented from time to time.

"Areas of Association Responsibility" means (i) all Common Area; (ii) all land, and the Improvements situated thereon, located within the boundaries of a Lot which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or the terms of another Recorded document executed by the Association; and (iii) all real property, and the Improvements situated thereon, within the Project located within dedicated rights-of-way with respect to which the State of Kansas or any county or municipality has not accepted responsibility for the maintenance thereof, but only until such time as the State of Kansas or any county or municipality has accepted all responsibility for the maintenance, repair and replacement of such areas.

"Articles" means the Articles of Incorporation of the Association, as amended from time to time.

"Assessment" means an Annual Assessment or Special Assessment.

"Assessment Lien" means the lien created and imposed by Article 6 of this Declaration.

"Assessment Period" means the period set forth in **Section 6.6** of this Declaration.

"Association" means the Kansas nonprofit corporation to be organized by Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to incorporate the Association

under the name of "LUXE Townhomes Community Association," but if such name is not available, Declarant reserves the right to incorporate the Association under such other name as the Declarant deems appropriate.

"Association Rules" means the rules adopted by the Board pursuant to **Section 5.3** of this Declaration, as amended from time to time.

"Board" means the Board of Directors of the Association.

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

"Common Area" means all land designated by "Master Developer" for the general use, benefit or enjoyment of all owners, tenants, and occupants of the Neighborhood as defined hereafter which is (a) designated as a tract on any plat or future plan of any portion of the Neighborhood, (b) deeded to the Association by or at the direction of the Master Developer, or (c) the subject of easements, leases, licenses or other rights of use granted to the Association by or at the direction of the Developer, together with all improvements, fixtures, equipment and other tangible personal property located on, used in connection with or forming a part of any of the foregoing land, which may include but is not limited to the following: buildings and structures; plantings, irrigation systems and other landscape features, playgrounds, picnic areas, parking areas, recreational facilities and equipment; sidewalks, sidewalks and walkways; lighting, roads, signs, monuments, walls, fences, fountains and sculptures, signage, common mailboxes and appurtenant facilities, pools, lakes, detention ponds, streams, and storm water detention, treatment and drainage facilities, provided however, the foregoing does not constitute a representation or warranty that any Common Area so enumerated will exist or continue to exist within the Neighborhood.

"Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.

"Declarant" means LUXE LLC, a Kansas limited liability company, and any person or entity to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

"Declaration" means this Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

"First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages and deeds of trust on the same Lot.

"First Mortgagee" means the holder or beneficiary of any First Mortgage.

"Improvement" means any building, fence (including underground electric pet fence), wall or other structure (including, without limitation, any sheds, basketball poles/hoops, play structures, patio covers and balconies), and any swimming pool, road, driveway, parking area (paved or unpaved) and any trees, plants, shrubs, grass and other landscaping improvements of every type and kind.

"Lessee" means the lessee or tenant under a lease, oral or written, of any Lot including an assignee of a lease.

"Lot" means each separate lot within the Neighborhood, as shown on any recorded plat of all or part of the Neighborhood, whether now or in the future recorded, which is intended for individual ownership, except any such separate parcel included within the Common Area. Also, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot.

"Maintenance Standard" means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Project.

"Master Developer" means Luxe, LLC a Kansas limited liability company, its successors and assigns, and any individual or entity to which it assigns its rights, privileges, duties and obligations under the Master Declaration by a Recorded instrument.

"Member" means any Person who is a member of the Association.

"Neighborhood" means all of the Property, together with all other property that is made a part of the Neighborhood from time to time pursuant to the terms of this Declaration.

"Owner" means the record owner, whether one or more Persons, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include Persons having an interest in a Lot merely as security for the performance of an obligation or a Lessee. Owner shall not include a purchaser under a purchase contract pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee, the trustor shall be deemed to be the Owner. In the case of the Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

"Person" means a natural person, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, governmental entity, governmental subdivision or agency, or other legal or commercial entity.

"Plat" means the plat for Vista Village, 2nd Plat recorded in Book ___, page ___, of the Johnson County, Kansas Recorder of Deeds, and all amendments, supplements and corrections thereto.

"Property" or "Project" means the real property described on **Exhibit A** attached to this Declaration together with all Improvements located thereon.

"Project Documents" means this Declaration, the Articles, the Bylaws, the Association Rules and the Architectural Committee Rules.

"Purchaser" means any Person, other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot, except for: (i) a Person who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale or lease of other Lots; or (ii) a Person who, in addition to purchasing a Lot, is assigned or has acquired any or all of the Declarant's rights under this Declaration.

"Recording" means placing an instrument of public record in the office of the Johnson County, Kansas Recorder of Deeds, and "Recorded" or "Recordation" means having been so placed or the act of placing of public record.

"Resident" means each individual occupying or residing in any Residential Unit.

"Residential Unit" means any building, or portion of a building, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

"Shared Facilities" means shared driveways, sewer lines, party walls, utility lines, gutters, trim and roofs that are shared between Owners who share a common attached building.

"Special Assessment" means any assessment levied and assessed pursuant to **Section 6.5** of this Declaration.

"Street Easement Area" means that area identified on the Plat as "Private Accessway and Easement" which provides vehicular and pedestrian ingress and egress to each Lot from a publicly dedicated right-of-way.

"Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six (6) feet tall, standing at ground level on any part of any other Lot, Common Area or any other property abutting the Project.

ARTICLE 2

PLAN OF DEVELOPMENT

2.1 Property Subject to the Declaration. This Declaration is being Recorded to establish a general plan for the development, sale, lease and use of the Project in order to protect and enhance the value and desirability of the Project. The Declarant declares that all of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed, or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such Person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development, sale, lease and use of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2 Disclaimer of Representations. Declarant makes no representations or warranties whatsoever that: (i) the Project will be completed in accordance with the plans for

the Project as they exist on the date this Declaration is Recorded; (ii) any Property subject to this Declaration will be committed to or developed for a particular use or for any use; or (iii) the use of any Property subject to this Declaration will not be changed in the future.

2.3 Indemnification. To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association, each member of the Architectural Review Committee and Master Developer (to the extent a claim may be brought against the Master Developer by reason of its appointment or removal of or control over any such other persons) (each, an “Indemnified Party”) against all expenses and liabilities (including attorneys’ fees) reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association or member of the Architectural Review Committee), provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party’s duties. The forgoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified party may be entitled at law or otherwise.

ARTICLE 3

USE RESTRICTIONS

3.1 Architectural Control.

3.1.1 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.2 No Improvement which would be Visible From Neighboring Property shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee. No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any part of a Lot, or any Improvements located thereon which are Visible From Neighboring Property, from their appearance on the date this Declaration is Recorded shall be made or done without the prior written approval of the Architectural Committee. Any Owner desiring approval of the Architectural Committee for the construction, installation addition, alteration, repair, change or replacement of any Improvement which is or would be Visible From Neighboring Property shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform, including, without limitation, the distance of such work from neighboring properties, if applicable. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within thirty (30) days after the application, together with any fee payable pursuant to **Section 3.1.5** of this Declaration and all supporting information,

plans and specifications requested by the Architectural Committee, have been submitted to the Architectural Committee, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans. The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.3 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.4 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be approved in writing by the Architectural Committee.

3.1.5 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.6 All Improvements constructed on Lots shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

3.1.7 The provisions of this Section do not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

3.1.8 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.9 The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a warranty or representation by the Architectural Committee as to the quality of such construction, installation, addition, alteration, repair, change or other work or that such construction, installation, addition, alteration, repair, change or other work conforms to any applicable building codes or other federal, state or local law, statute, ordinance, rule or regulation.

3.2 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, shed, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary

buildings, trailers or other structures used during the construction of Improvements approved by the Architectural Committee shall be removed immediately after the completion of construction, and in no event shall any such buildings, trailer or other structures be maintained or kept on any property for a period in excess of twelve (12) months without the prior written approval of the Architectural Committee.

3.3 Rentals. No Lot may be used for transient purposes, such as a short- term rentals or use of the Lot as a time share, AirBnB, Vacation Rental, or a hotel. Any sub-letting or rental of a Lot for a period of less than One Hundred and Eighty (180) consecutive days is prohibited. The use of a Lot for transient purposes, sub-letting, or rentals less than One Hundred and Eighty (180) consecutive days is a violation of this Declaration and the Association is expressly authorized to take any action to enforce the Declaration as the Board deems appropriate. If a Lot is rented, the Owner must notify the Association's management agent of the tenant's contact information and period of tenancy. The Owner is responsible for insuring that all its guests, occupants, tenants and other residents of the Lot comply with this Declaration and all Project Documents as incorporated herein.

3.4 Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or other property, and no odors or loud noises shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Normal construction activities and parking in connection with the building of Improvements on a Lot or other property shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots and other property shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials will be piled only in such areas as may be approved in writing by the Architectural Committee. In addition, any construction equipment and building materials stored or kept on any Lot or other property during the construction of Improvements may be kept only in areas approved in writing by the Architectural Committee, which may also require screening of the storage areas. The Architectural Committee in its sole discretion shall have the right to determine the existence of any such nuisance. The provisions of this Section shall not apply to construction activities of the Declarant.

3.5 Diseases and Insects. No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

3.6 Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation including, without limitation, satellite or microwave dishes, shall be erected, used, or maintained on any Lot without the prior written approval of the Architectural Committee.

3.7 Mineral Exploration. No Lot or other property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

3.8 Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot or other property, except in covered containers of a type, size and style which are approved by the Architectural Committee. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from Lots and other property and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot or other property.

3.9 Clothes Drying Facilities. No outside clotheslines or other outside facilities for drying or airing clothes shall be erected, placed or maintained on any Lot or other property so as to be Visible From Neighboring Property.

3.10 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or other property unless the same shall be contained in conduits or cables installed and maintained under ground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

3.11 Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or other property shall be allowed to overhang or otherwise to encroach upon any side-walk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

3.12 Residential Use. All Residential Units shall be used, improved and devoted exclusively to residential use. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Project; (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other Residents in the Project; and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Project, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the Residents of a Residential Unit and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended or does generate a profit; or

(iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

3.13 Animals. No animal, bird, fowl, poultry, reptile or livestock may be kept on any Lot, except that dogs, cats, parakeets or similar household birds (not to exceed a reasonable number, as determined by the Architectural Committee in its sole discretion ("Permitted Pets")) may be kept on a Lot if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. All Permitted Pets under this Section shall be confined to an Owner's Lot except that a dog or cat may be permitted to leave an Owner's Lot if such dog or cat is at all times kept on a leash not to exceed six feet (6') in length and is not permitted to enter upon any other Lot. No Permitted Pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any Permitted Pet shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Owner, Lessee or Resident, the Architectural Committee shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular Permitted Pet is a nuisance or making an unreasonable amount of noise. Any decision rendered by the Architectural Committee shall be enforceable in the same manner as other restrictions set forth in this Declaration. Any Owner, Resident or other person who brings or permits his pet to be on any Lot, the Common Area or public right-of-way adjacent to a Lot or Common Area shall be responsible for immediately removing any solid waste deposited by said pet. No Owner or Resident shall allow its Permitted Pets (or any other animal) to enter the Golf Course.

3.14 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot, except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other Improvements or such machinery or equipment which Declarant or the Association may require for the operation and maintenance of the Project.

3.15 Signs. No signs whatsoever (including, but not limited to, commercial, political, "for sale", "for rent" and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

3.15.1 Signs required by legal proceedings.

3.15.2 Residence identification signs provided the size, color, content and location of such signs have been approved in writing by the Architectural Committee.

3.15.3 One (1) "For Sale" sign provided the size, color, design, message content, location and type have been approved in writing by the Architectural Committee.

3.16 Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant, without the prior written approval of the Architectural Committee. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Architectural Committee. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any

governmental authority by any Person other than the Declarant unless the application has been approved by the Architectural Committee and the proposed use otherwise complies with this Declaration.

3.17 Trucks, Trailers, Campers and Boats. No car, van, truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot (including the Street Easement Area and Access Easement Area) or Common Area so as to be Visible From Neighboring Property, except for: (i) the temporary parking of a motor home, camper, recreational vehicle or boat and boat trailer on the concrete driveway situated on a Lot (or Common Area over which there is an Access Easement), for a period of not more than twenty-four (24) consecutive hours and not more than forty-eight (48) hours within any seven (7) day period for the purpose of loading or unloading such vehicle or equipment; (ii) temporary construction trailers or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved by the Architectural Committee; and (iii) boats and motor vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair. **Notwithstanding anything herein contained to the contrary, the parking of any vehicles permitted under this Section shall not prevent ingress or egress to or from any Lot to the Street Easement Area. If a driveway is situated on a Lot in a manner which would prevent ingress and egress from another Lot to the Street Easement if vehicles were parked on such driveway, then parking on such driveway shall be prohibited.**

3.18 Motor Vehicles.

3.18.1 Except for emergency vehicle repairs, no automobile or other motor vehicle shall be constructed, reconstructed or repaired upon a Lot (including the Street Easement and Access Easement) or Common Area and no inoperable vehicle may be stored or parked on any such Lot or Common Area so as to be Visible From Neighboring Property.

3.18.2 No automobile or other motor vehicle shall be parked on Common Area or on the Street Easement Area, except for automobiles or motor vehicles of guests of Residents which may be parked on that portion of the Street Easement Area identified as "visitor parking" for a period of not more than forty-eight (48) hours during any seven day period.

3.19 Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner provided for in this Declaration for the collection of Assessments.

3.20 Drainage. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

3.21 Garages and Driveways. Garages shall be used only for the parking of vehicles and shall not be used or converted for living or recreational activities without the prior written approval of the Architectural Committee. Items may be stored in a garage so long as there is still sufficient space in the garage for the parking of at least one (1) passenger car.

3.22 Rooftop Air Conditioners Prohibited. No air conditioning units or appurtenant equipment may be mounted, installed or maintained on the roof of any Residential Unit or other building so as to be Visible from Neighboring Property.

3.22 Basketball Goals and Backboards. No basketball goal or backboard shall be constructed or installed on any Lot without the prior-written approval of the Architectural Committee.

3.23 Exterior Lighting. All exterior lighting shall be soft white lighting unless otherwise approved by the Architectural Committee.

3.24 Variances; Diminution of Restrictions. The Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article 3 if the Architectural Committee determines in its discretion that (i) a restriction would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the Recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for Residents of the Project. If any restriction set forth in this Article 3 is adjudged or deemed to be invalid or unenforceable as written by reason of any federal, state or local law, ordinance, rule or regulation, then a court or the Board, as applicable, may interpret, construe, rewrite or revise such restriction to the fullest extent allowed by law, so as to make such restriction valid and enforceable. Such modification shall not serve to extinguish any restriction not adjudged or deemed to be unenforceable.

ARTICLE 4

EASEMENTS

4.1 Owners' Easements of Enjoyment.

4.1.1 Subject to the rights and easements granted to the Declarant in Sections 4.3 and 4.4 of this Declaration, every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area (including, but not limited to, the right to use any streets which may be part of the Common Area for ingress and egress to the Member's Lot) which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in **Section 5.11** of this Declaration.
- (ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.
- (iii) The right of the Association to suspend the right of an Owner and such Owner's family, Lessees and guests to use the Common Area (other than the right of an Owner and such Owner's family, Lessees and guests to use any streets which are part of the Common Area for ingress or egress to the Owner's Lot) if such Owner is more than thirty (30) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within thirty (30) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and the members of the Lessee's family residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area (except for access to such Owner's Lot) until the termination or expiration of such lease.

4.2 Utility Easement. There is hereby created in favor of the applicable utility providers an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or the Lots, but no sewers, electrical lines, water lines, or other utility or service lines may be installed or located on the Common Area or the Lots except as initially designed, approved and constructed by the Declarant or as approved by the Board.

4.3 Declarant's Use for Sales and Leasing Purposes. Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising, identification or directional signs on the Common Area and Lots owned by Declarant while the Declarant is selling Lots. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such number, of such size and in such locations as Declarant deems appropriate. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.4 Declarant's Easements. Declarant shall have the right and an easement on and over the Areas of Association Responsibility to construct and maintain all Improvements the Declarant may deem necessary and to use any Lots and other property owned by Declarant for

construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances, supplies and fixtures, and the performance of work respecting the Project. The Declarant shall have the right and an easement upon, over, and through the Areas of Association Responsibility as may be reasonably necessary for the purpose of discharging its obligations or exercising the rights granted to or reserved by the Declarant by this Declaration. In the event of any conflict or inconsistency between this Section and any other provision of this Declaration, this Section shall control.

4.5 Easement in Favor of Association. The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.5.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.5.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility upon such Lots or accessible only from such Lots;

4.5.3 For correction of emergency conditions in one or more Lots;

4.5.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

4.5.5 For inspection of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, Lessees, invitees and the other occupants of the Lot.

4.6 Street Easement. The Street Easement over the Street Easement Area (as identified on the Plat) is granted for the purpose of (a) providing vehicular and pedestrian ingress and egress to each Lot from a private dedicated right-of-way for the benefit of the Owners of Lots, their families, invitees, licensees, Lessees and contract vendees, and to the providers of services (including, without limitation, refuse collection and emergency services), (b) installing, operating, maintaining and repairing public utilities, including, without limitation, water, sewer, gas, electricity, telephone and cable television for the benefit of the applicable utility or service providers, and (c) permitting drainage from the Lots and Common Areas. The Street Easement Area shall be maintained by the Association.

4.7 Access Easement. The Access Easement over the Access Easement Areas (identified on the Plat) is granted for the purpose of providing ingress and egress for the benefit of those Owners of certain Lots, their families, guests, invitees, licensees, Lessees and contract vendees to enable them to gain access to their respective Lots across portions of other Lots. The Access Easements Areas shall be maintained by the Association.

4.8 Courtyard Easement. Each Owner of a Lot sharing a front yard courtyard with another contiguous Lot shall have a right and easement of enjoyment in and to the entire courtyard built upon such contiguous Lots. The courtyard structures shall be maintained by the Association, and the personal property of Owners located therein shall be maintained by (and reserved for the personal use of) the Owner to whom the personal property belongs.

4.9 Drainage Easement. There is hereby created a drainage easement for the benefit of Owners of a Residential Unit over the contiguous Residential Unit for the purpose of permitting stormwater runoff from attached roofs to drain onto the contiguous Residential Unit and the Lot upon which the Residential Unit is situated.

4.10 Easement for Unintended Encroachments. To the extent that any Residential Unit encroaches upon any other Lot or Common Area as a result of the original construction of Improvements upon Lots or the shifting or settling thereof, or alteration or restoration authorized by this Declaration, a valid easement exists for the encroachment and for the maintenance thereof.

ARTICLE 5

THE ASSOCIATION; ORGANIZATION; MEMBERSHIP AND VOTING RIGHTS

5.1 Formation of Association. The Association shall be a nonprofit Kansas corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control.

5.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. Unless the Project Documents specifically require the vote or written consent of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board. The Board shall have the power to levy reasonable fines against an Owner for a violation of the Project Documents by the Owner, a Lessee of the Owner or by any Resident of the Owner's Lot, and to impose late charges for payment of such fees if unpaid thirty (30) or more days after the due date, provided that the late charge shall not exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid fee, or such greater amount as permitted under applicable law.

5.3 The Association Rules. The Board may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to: (i) the management, operation and use of the Areas of Association Responsibility; (ii) the Maintenance Standard and minimum standards for maintenance of Lots; or (iii) the health, safety or welfare of the Owners and Residents. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail. The Association Rules shall be enforceable in the same manner and to the same extent as the covenants, conditions and restrictions set forth in this Declaration.

5.4 Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged- in willful or intentional misconduct.

5.5 Implied Rights. The Association may exercise any right or privilege given to the Association expressly by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Project Documents or reasonably necessary to effectuate any such right or privilege.

5.6 Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

5.7 Classes of Members and Voting Rights. The Association shall have the following two classes of voting membership:

- (i) **Class A.** Class A Members are all Owners, with the exception of the Declarant until the termination of the Class B membership, of Lots. Each Class A Member shall be entitled to one (1) vote for each Lot owned. Upon the termination of the Class B membership, the Declarant shall be a Class A Member so long as the Declarant owns any Lot.
- (ii) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the earliest of: (i) the date on which the votes entitled to be cast by the Class A Members equals or exceeds the votes entitled to be cast by the Class B Member;; or (ii) when the Declarant notifies the Association in writing that it relinquishes its Class B membership.

5.8 Voting Procedures. No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast by a Class A Member for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

5.9 Transfer of Membership. The rights and obligations of any Member other than the Declarant shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's-Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of Record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Kansas. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall notify the Association of his purchase within ten (10) days after he becomes the Owner of a Lot.

5.10 Architectural Committee. The Association shall have an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration. The Architectural Committee shall be a committee of the Board. The Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. So long as the Declarant owns any Lot, the Declarant shall have the sole right to appoint and remove the members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the members of the Architectural Committee shall be appointed by the Board. The Declarant may at any time voluntarily surrender its right to appoint and remove the members of the Architectural Committee, and in that event the Declarant may require, for so long as the Declarant owns any Lot, that specified actions of the Architectural Committee, as described in a Recorded instrument executed by the Declarant, be approved by the Declarant before they become effective. The Architectural Committee may promulgate architectural guidelines, standards and procedures to be used in rendering its decisions. Such guidelines, standards and procedures may include, without limitation, provisions regarding: (i) the size of Residential Units; (ii) architectural design, with particular regard to the harmony of the design with the surrounding structures and topography; (iii) placement of Residential Units and other buildings; (iv) landscaping design, content and conformance with the character of the Property and permitted and prohibited plants; (v) requirements concerning exterior color schemes, exterior finishes and materials; (vi) signage; and (vii) screen wall design and appearance. The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

5.11 Conveyance or Encumbrance of Common Area. The Common Area shall not be mortgaged, transferred, dedicated or encumbered without the prior written consent or affirmative vote of the Class B Member of the Association and the affirmative vote or written consent of the Owners representing at least two-thirds (2/3) of the votes entitled to be cast by Class A Members of the Association.

5.12 Suspension of Voting Rights. If any Owner fails to pay any Assessments or other amounts due to the Association under the Project Documents within fifteen (15) days after such payment is due, the Board of Directors shall have the right to suspend such Owner's right to vote until such time as all payments, including interest and attorneys' fees, are brought current. If any Owner violates any other provision of the Project Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of the violation, the Board shall have the right to suspend such Owner's right to vote until such infractions or violations of the Project Documents are corrected, provided such suspension shall not exceed sixty (60) days.

ARTICLE 6

COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

6.1 Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner, other than the Declarant, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association

in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them.

6.2 Annual Assessments.

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under the Project Documents, including the establishment of replacement and maintenance reserves, the Board, for each Assessment Period shall assess against each Lot an Annual Assessment.

6.2.2 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet all Common Expenses for any reason, including, without limitation, nonpayment of Assessment by Members, it may increase the Annual Assessment for that Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board. Notwithstanding any provision in the Declaration, Bylaws or Association Rules, the Board shall not impose an Annual Assessment in any Assessment Period that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of the majority of the Members.

6.3 **Rate of Assessment.** The amount of the Annual Assessment for each Lot other than Lots owned by the Declarant shall be the amount obtained by dividing the total budget of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of Lots subject to the Assessment at the time the Annual Assessment is levied by the Board. The Annual Assessment for each Lot owned by the Declarant shall be an amount equal to twenty-five percent (25%) of the Annual Assessment levied against Lots owned by Persons other than the Declarant until a certificate of occupancy is issued for a Residential Unit on a Lot, at which time the Declarant shall pay the same Annual Assessment levied against all other Owners for such Lot. If a Lot ceases to qualify for the twenty-five percent (25%) rate of assessment during the period to which an Annual Assessment is attributable, the Annual Assessment shall be prorated between the applicable rates on the basis of the number of days in the Assessment Period that the Lot qualified for each rate.

6.4 **Obligation of Declarant for Deficiencies.** So long as there is a Class B membership in the Association, Declarant shall pay and contribute to the Association, within thirty (30) days after the end of each fiscal year of the Association, or at such other times as may be requested by the Board, such funds as may be necessary, when added to the Annual

Assessments levied by the Association, to pay all Common Expenses of the Association as they become due.

6.5 Special Assessments. The Association may levy against each Lot which is then subject to assessment, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Areas of Association Responsibility, including fixtures and personal property related thereto, provided that any Special Assessment shall have the assent of two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

6.6 Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year, except that the first Assessment Period, and the obligation of the Owners to pay Annual Assessments shall commence upon the conveyance of the first Lot to a Purchaser and terminate on December 31 of such year. The Board in its sole discretion from time to time may change the Assessment Period.

6.7 Commencement Date of Assessment Obligation. All Lots described on **Exhibit A** to this Declaration shall be subject to assessment upon the conveyance of the first Lot to a Purchaser.

6.8 Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly or quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installation thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.9 Effect of Nonpayment of Assessments; Remedies of the Association.

6.9.1 Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall be deemed delinquent and shall bear interest from the date on which such Assessment or installment of the Assessment became delinquent at the rate of twelve percent (12%) per annum. In addition, the Board may establish a late fee, not to exceed the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Assessment or installment thereof (or such greater amount as permitted under applicable law), to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within thirty (30) days after such payment was due. Notwithstanding the foregoing, to the extent applicable law from time to time provides

for any shorter period of time after which Assessments or any other amounts payable hereunder may or shall become delinquent, such shorter period shall be deemed to apply in lieu of the time period set forth in this Declaration.

6.9.2 The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot; (ii) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (iii) all fines levied against the Owner of the Lot; (iv) all attorneys' fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot; (v) any amounts payable to the Association pursuant to **Section 7.3 or 7.4** of this Declaration; and (vi) any other amounts payable to the Association pursuant to the Project Documents. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, Record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is Recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorneys' fees. Before Recording any Notice of Lien against a Lot, the Association shall make a written demand to the delinquent Owner for payment of the delinquent Assessments, together with interest, late charges and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with Recording a Notice of Lien against the Lot.

6.9.3 The Assessment Lien shall have priority over all liens or claims except for: (i) liens and encumbrances Recorded before the Recordation of this Declaration; (ii) tax liens for real property taxes; (iii) assessments in favor of any municipal or other governmental body; and (iv) the lien of any First Mortgage or consensual mortgage or deed of trust on the Lot Recorded before the date on which the Assessment sought to be enforced became delinquent, or as otherwise provided from time to time under applicable law. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee's sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for 'unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

6.9.4 The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, title report fees, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

6.9.5 The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

6.10 Evidence of Payment of Assessments. Upon receipt of a written request from a Member or any other interested Person, the Association shall issue, or cause to be issued, within a reasonable period of time thereafter (but not later than seven (7) days after receipt of notice of a pending sale), a written certificate setting forth the amount of the Annual Assessment, any amount of the Annual Assessment that is unpaid, any Special Assessment or other Assessment, fee or charge currently due and payable with respect to a Lot, together with such other information as may be required by applicable law. Upon receipt of a written request from a lienholder, Member or Person designated by a Member, the Association shall issue, or cause to be issued, within seven (7) business days after receipt of the request, a recordable statement setting forth the amount of any unpaid Assessment against the Lot. The Association may make a reasonable charge for the issuance of such certificates or statements, which charges must be paid at the time the request for any such certificate or statement is made. Any such certificate or statement, when duly issued as herein provided, shall be conclusive and binding on the Association with respect to any matters therein stated as against any bona fide Purchaser of, or lender on, the Lot in question.

6.11 Purposes for which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Project and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Members and Residents, maintenance of landscaping and other Improvements on Areas of Association Responsibility, recreation, liability and property insurance, communications, ownership and operation of vehicle storage areas, education, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association may also expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Kansas or such municipality's charter.

6.12 Surplus Funds. The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus

any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

6.13 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to the current Annual Assessment for the Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under the Project Documents. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

6.14 Transfer Fee. Each Purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

ARTICLE 7

MAINTENANCE

7.1 Association Maintenance Responsibility. The Association shall be responsible for the following:

7.1.1 Maintaining, repairing, replacing, repainting and otherwise keeping in good order and repair the Common Area and any Improvements thereon.

7.1.2 Maintaining, repairing and replacing and otherwise keeping in good order and repair the common landscaping walls and retaining walls.

7.1.3 Maintaining, repairing, replacing, repainting and otherwise keeping in good order and repair all property within the Street Easement Area and the Access Easement Area, including; without limitation, the sewer main line, the water main line, gas, storm drains, conduits, telecommunication lines, easements or rights-of-way for such public and private utilities, and any other utility main line that effect the Project as a whole, roadways or other purposes over, under, upon and through all easements and rights-of-way whether by recorded instrument or shown on any recorded plat as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Neighborhood or any Common Area as may be reasonably necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Owners.

7.1.4 Provide for the collection and disposal of trash and garbage, and implement a means for dividing the expense of the same among the Owners separate from any Assessment.

7.1.5 Clean streets, gutters, catch basins, sidewalks, storm sewers and drainage facilities, including any such facilities or improvements that serve the Neighborhood.

7.1.6 Erect and maintain signs for purposes of identification, traffic control and public safety.

7.1.7 Employ duly qualified security officers to provide protection for the Neighborhood or any part thereof.

7.1.8 Borrow money in such amounts, at such rates of interest, upon such terms and security and for such periods of time as the Association may deem necessary or appropriate, in its sole discretion.

7.1.9 Maintaining, replacing, watering, trimming, weeding, fertilizing and otherwise caring for all landscaping in the front, side yards, and back yards (unless fenced) of each Lot, including all water and electric costs, irrigation lines and facilities, spring start-up, seasonal control and winterization of lawn and landscape systems, all with such frequency and in such manner as may be determined by the Board from time to time in its discretion; provided, that the Association will not be required to perform any maintenance of flowers, plants or other landscaping planted or installed by an Owner or Resident or in a fenced or obstructed with temporary or permanent improvements, personal property, or other obstructions that make it difficult or impractical for the Association, its agents or contractors to furnish such services. Maintenance by the Association does not include the replanting or reseeding of sod or grass.

7.1.10 Maintaining, repairing, replacing, repainting and otherwise keeping in good order and repair all other portions of each Lot and the Improvements thereon lying outside the Lot line, but excluding the interior of the Residential Unit and any other item designated to be the duty of the Owners pursuant to this **Article 7**).

7.1.11 The Association may, if deemed appropriate by the Board, provide for termite or other pest control, but if the Association does not do so, each Owner will be responsible for performing (or causing to be performed) termite and pest control service to keep the Lot free from termite and pest infestation.

7.1.12 The cost of the performance by the Association of its duties under this **Article 7** shall be a Common Expense and shall be paid for by the Association. The Board shall determine in its sole discretion the level of appropriate maintenance for all items for which the Association is responsible under this **Article 7**, and all Owners shall cooperate with the Board in any way required by the Board in order for the Board to fulfill its obligations under this Article.

7.1.13 Pay all taxes and assessments levied or assessed against the Common Areas and any other property owned or leased by the Association.

7.1.14 Manage, control, maintain, repair, and replace all Common Areas and manage and control Association Services for the benefit of the Owners, including exercise of control over such easements, leases, licenses, usage rights and other rights and property as the Association may acquire from time to time.

7.1.15 Provide snow removal for sidewalks in street right-of-way adjacent to Lots, and private streets as soon as reasonably possible when accumulation reaches two

inches. The Association shall not be responsible for the removal of ice or icing conditions, nor shall it be liable to any person injured from slipping or falling on ice or snow. Association is not responsible for the removal of snow or ice from drive-ways.

7.1.16 Tree care services, consisting of trimming of trees and removal of dead or diseased trees, unless in fenced area.

7.1.17 Establish reserve accounts for repair and maintenance of Common Area and any other Association property and in connection with its obligations to provide Association Services, periodically review the adequacy thereof, and maintain such reserve funds in accounts until expended for the benefit of the Association.

7.2 Duties of Owners. Each Owner shall maintain, repair and replace, at such Owner's expense, all portions of such Owner's Lot and all Improvements situated thereon not required to be maintained, repaired and replaced by the Association pursuant to Section 7.1 in good condition and repair, including, but not limited to, roofs (subject to Section 7.3), screens, screen doors or windows, walls, or other glass in or on any Residential Unit or other structure or Improvement situated thereon; all plumbing, electrical, heating, ventilating and air conditioning units, heat pumps, condensers or other systems or equipment of any kind or nature on any Residential Unit; all plumbing pipes and fixtures and appliances within a Residential Unit; subject to the provisions of Section 7.5 below, fencing; and grass, hedges, shrubs, vines, plants and other landscaping within an enclosed back yard area of a Lot or Residential Unit. No yard equipment, wood piles or storage areas may be maintained so as to be Visible from Neighboring Property. All Lots upon which no Residential Unit has been constructed shall be maintained in a weed free and attractive manner.

7.3 Assessment of Certain Costs of Maintenance and Repair. In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Owner, his family, Lessees, guests or invitees, the cost of such maintenance or repairs shall be paid by such Owner to the Association upon demand, and payment of such amounts shall be secured by the Assessment Lien. Payment shall be remitted within fifteen (15) days of the Owner's receipt of the Association's demand for payment.

The Owners shall maintain, repair and replace "Shared Facilities" appurtenant to each Residence, including but not limited to, the party fence, shared sewer lines, water lines, the roof, etc. in keeping with all applicable building and fire code rules and regulations, and otherwise in good repair and safe condition. The cost of required and other prudent repairs, maintenance and replacement of Shared Facilities, shall be shared equally by the Owners of attached Residences. The cost of required and other prudent repairs, maintenance and replacement of the roof shall be shared proportionately by the Owners of attached Residences based on the ratio of the square footage of the main floor of each such Residence to the total square footage of the attached Residences. If there is any dispute amongst Owners of attached Residences on whether a roof needs repaired, maintained or replaced, either Owner shall have the right to ask the Architectural Committee to review such requested repair, maintenance or replacement. If the Architectural Committee agrees that such requested repair, maintenance or replacement is necessary, the Architectural Committee shall have the power to order the Owners of the attached Residences to perform such work and, if such work is not performed within a reasonable time, the Architectural Committee may contract for such work and assess the

Owners of the attached Residences for the cost of such work for their pro rata share in the manner provided for in this Section.

7.3.1 Each Owner hereby grants the other Owner the right to enter upon and cross its Lot and the improvements thereon, at reasonable times and upon reasonable notice, to make required repairs to or otherwise restore the roof, shared driveway and other improvements affected by the party fence. Except in cases of emergency, or where lives or property are endangered by unsafe conditions, before using this easement the Owner of a benefitted Residence must give the Owner of a burdened Residence the opportunity to make the repairs and restoration itself. In any event, the Owner of the benefitted Residence must exercise this easement in a manner reasonably calculated, under the circumstances, to minimize interruption of the Owner of the burdened Residence or its tenant.

7.3.2 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the Lot and shall pass to such Owner's assignees and successors in title.

7.4 Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project that are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof shall be paid by such Owner to the Association upon demand and payment of such amounts shall be secured by the Assessment Lien.

7.5 Boundary Fences.

The rights and duties of Owners of Lots with respect to boundary fences shall be as follows:

7.5.1 The Association may install a fence on the boundary line between any Owner's Lot and Common Area. The Association shall pay all costs of installing such fence. Once the fence is installed, such fence shall be deemed a boundary fence.

7.5.2 Each Owner shall have the right to install a fence on the boundary line between the Owner's Lot and each contiguous Lot so long as the fence is approved by the Architecture Committee. The Owner installing the fence shall be responsible for all costs of installing the fence. Once the fence is installed, the fence shall be deemed a boundary fence.

7.5.3 Only one fence may be installed on each boundary line. Any Owner or the Association may connect into an existing boundary fence.

7.5.4 The Owners of contiguous Lots who have a boundary fence shall both equally have the right to use such fence provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

7.5.5 In the event that any boundary fence is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the boundary fence, without cost to the other Owner or Owners.

7.5.6 In the event any such boundary fence is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents; Lessees, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time), then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same at their joint and equal expense. If the boundary fence abuts Association property, it shall be the responsibility of the Owner to rebuild or repair the same. The Association shall not share in the cost of repair.

7.5.7 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

7.5.8 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a boundary fence shall first obtain the written consent of the Architecture Committee and any adjoining Owners. Any dispute arising between adjoining Owners pursuant to this Subsection may be resolved by a decision of the Board upon request by an Owner for a hearing, provided that all affected Owners or their representatives are afforded an opportunity to be present at such hearing.

7.5.9 In the event any boundary fence encroaches upon a Lot, a valid easement for such encroachment and for the maintenance of the boundary fence shall and does exist in favor of the Owners of the Lots which share such boundary fence.

ARTICLE 8

INSURANCE

8.1 Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a Purchaser, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Commercial general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000 for a single occurrence. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Areas of Association Responsibility and all other portions of the Project which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile liability coverages, to cover liabilities of the Owners as a group to an Owner;

8.1.2 Property insurance on all Residential Units and other Areas of Association Responsibility, exclusive of Improvements and betterments installed in Residential Units or back yards by Owners or Residents, issued under an "All Risks of Direct Physical Loss" coverage form in an amount equal to the maximum insurable replacement value of the Residential Units and other Areas of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost, without deduction for depreciation, of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from a property insurance policy. The Association will not be obligated to obtain or maintain insurance coverage with respect to the contents of any Residential Unit other than fixtures (i.e., non-fixed appliances, window coverings and wallcoverings other than paint will not be covered). All fixtures (i.e., carpet, sinks, tubs, shower enclosures, built-in mirrors, cabinets, lights and built-in kitchen equipment) shall be insured at a replacement cost equal to the base fixtures installed by Declarant; each Owner shall be responsible for insuring additional replacement cost for upgrades.

8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Kansas.

8.1.4 Directors' and officers' liability insurance covering all the directors, officers and committee members of the Association in such limits as the Board may determine from time to time.

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

8.1.6 The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions: (i) that there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household; (ii) no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy; (iii) that the coverage afforded by such policy shall be primary and shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust; (iv) a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners; (v) statement of the name of the insured as the Association for the use and benefit of the individual Owners; and (vi) for policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the Association and each First Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

8.2 Insurance Obtained by Owners. Each Owner shall obtain and maintain property insurance insuring all improvements on such Owner's Lot against loss by fire and such other perils as are covered by a standard fire insurance policy with a so-called "extended

coverage" endorsement, and such personal liability and other insurance as such Owner desires, the premiums for which shall be paid by such Owner. In addition, the expenses of any alternative accommodations for an Owner and any Resident of such Owner's Residential Unit following any damage to or destruction of the Residential Unit on a Lot, and during any period of repair, reconstruction, restoration or replacement of such Residential Unit will be the responsibility of that Owner or those Residents (or both), and not of the Association or any other Owner, nor will those expenses be covered by insurance obtained by the Association. Any Owner or Resident may, at such Owner's or Resident's sole expense, obtain separate insurance, if available, covering such alternative accommodation expenses. If improvements on a Lot are damaged or destroyed by casualty or other cause, such improvements shall be repaired and restored with due diligence and any insurance proceeds shall be applied to restoration or repair; provided, however, that the Owner may elect not to restore or repair if the Association and the owner of an attaching building consents to Owner's election not to restore or repair. Should Owner elect not to restore or repair as permitted by the preceding sentence, the Owner shall clear away all debris, restore any Shared Facilities that serve the adjacent Owner, and take all other action required (including filling to grade and seeding or sodding, and landscaping) so that the area formerly occupied by the demolished improvements shall be neat and attractive in appearance and compatible with the high quality residential development.

8.3 Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue a certificate or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under a deed of trust to whom certificates of insurance have been issued.

8.4 Payment of Premiums. The premiums for any insurance obtained by the Association pursuant to **Section 8.1** of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

8.5 Payment of Insurance Proceeds. With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of **Section 8.6** of this Declaration, the proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility.

8.6 Repair and Replacement of Damaged or Destroyed Property. Any portion of the Areas of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners representing at least eighty percent (80%) of the total authorized votes in the Association vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Areas of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Areas of Association Responsibility shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall either (i) be retained

by the Association as an additional capital reserve, or (ii) be used for payment of operating expenses of the Association if such action is approved by the affirmative vote or written consent, or any combination thereof, of Members representing more than fifty percent (50%) of the votes in the Association.

ARTICLE 9

GENERAL PROVISIONS

9.1 Enforcement. The Association or any Owner shall have the right to enforce the Project Documents in any manner provided for in the Project Documents or by law or in equity, including, but not limited to, an action to obtain an injunction to compel removal of any Improvements constructed in violation of this Declaration or to otherwise compel compliance with the Project Documents. The failure of the Association or an Owner to take enforcement action with respect to a violation of the Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. If any lawsuit is filed by the Association or any Owner to enforce the provisions of the Project Documents or in connection with any matter arising out of the Project Documents or the operations of the Association, the prevailing party in any such action shall be entitled to recover from the other party attorneys' fees, costs and expenses incurred by the prevailing party in such action.

9.2 Term; Method of Termination. This Declaration may be terminated at any time if such termination is approved by (i) the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in each class of membership, (ii) the affirmative vote or written consent, or any combination thereof, of holders of First Mortgages on Lots, the Owners of which have seventy-five percent (75%) or more of the votes in the Association, and (iii) the express written consent of the Master Developer until such time as the Master Association is incorporated and, thereafter, the express consent of the board of the Master Association rather than the Master Developer. If the necessary votes and consents to any such termination are obtained, the Board shall cause to be Recorded a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

9.3 Amendments.

9.3.1 Except for amendments made pursuant to **Subsections 9.3.2 or 9.3.4**, and subject to the additional requirements for amendments set forth in **Article 10** of this Declaration, the Declaration may only be amended at any time by the written approval or the affirmative vote, or any combination thereof, of Owners of not less than seventy-five percent (75%) of the Lots.

9.3.2 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the

Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or requested by the Declarant or the Board.

9.3.3 So long as the Declarant owns any Lot, any amendment to this Declaration must be approved in writing by the Declarant.

9.3.4 The Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, may amend this Declaration at any time without the consent of any other Owner or First Mortgagee to correct any error or inconsistency in the Declaration.

9.3.5 So long as the Declarant owns more than sixty-five percent (65%) of the Lots subject to this Declaration, any amendment to this Declaration shall be signed by Declarant and Recorded. At any time the Declarant does not own at least sixty-five percent (65%) of the Lots subject to this Declaration, any amendment approved pursuant to **Subsection 9.3.1** of this Declaration or by the Board pursuant to **Subsection 9.3.2** or **9.3.4** of this Declaration shall be signed by the President or Vice President of the Association and shall be Recorded, and any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to **Subsections 9.3.2** or **9.3.4** of this Declaration shall be signed by the Declarant and Recorded; Unless a later effective date is provided for in the amendment, any amendment to this Declaration shall be effective upon the Recording of the amendment.

9.4 Rights of First Mortgagees.

9.4.1 Any First Mortgagee will, upon written request, be entitled to: (i) inspect the books and records of the Association during normal business hours; (ii) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party; and (iii) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

9.4.2 No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

9.4.3 Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) of Owners (other than the sponsor, developer or builder) of at least two-thirds (2/3) of the Lots have given their prior written approval, the Association shall not be entitled to: (ii) Seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots. the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this Subsection;

(i) Change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner;

- (ii) Change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots or the maintenance of the Common Area;
- (iii) Fail to maintain fire and extended coverage insurance on Areas of Association Responsibility on a current replacement cost basis in an amount of at least one hundred percent (100%) of insurable value; or
- (iv) Use hazard insurance proceeds for losses to any Area of Association Responsibility other than the repair, replacement or reconstruction of such Area of Association Responsibility.

9.4.4 No provision of this Declaration gives or shall be construed as giving any owner or other Person priority over any rights of a First Mortgagee of a Lot in the case of the distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Area.

9.4.5 Any First Mortgagee who receives a written request from the Board to respond to or consent to any action requiring the consent of the First Mortgagee shall be deemed to have approved such action if the Association has not received a negative response from such First Mortgagee within thirty (30) days of the date of the Association's request.

9.4.6 In the event of any conflict or inconsistency between the provisions of this Section and any other provision of the Project Documents, the provisions of this Section shall prevail; provided, however, that in the event of any conflict or inconsistency between the provisions of this Section and any other provisions of the Project Documents with respect to the number or percentage of Owners or First Mortgagees that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in **Subsection 9.4.3** of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners or First Mortgagees shall prevail; provided, however, that the Declarant, so long as the Declarant owns any Lot, and thereafter, the Board, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant or the Board.

9.5 Interpretation. Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural

Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.

9.6 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

9.7 Rule Against Perpetuities. If any interest purported to be created by this Declaration is challenged under the rule against perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

9.8 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

9.9 Notice of Violation. The Association shall have the right to Record a written notice of a violation by any Owner or Resident of any restriction or other provision of the Project Documents. The notice shall be executed by an officer of the Association and shall contain substantially the following information: (i) the name of the Owner or Resident violating, or responsible for the violation of, the Project Documents; (ii) the legal description of the Lot against which the notice is being Recorded; (iii) a brief description of the nature of the violation; (iv) a statement that the notice is being Recorded by the Association pursuant to this Declaration; and (v) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a notice of violation shall serve as notice to the Owner and Resident, and any subsequent purchaser of the Lot, that there is such a violation. If, after the Recordation of such notice, it is determined by the Association that the violation referred to in the notice does not exist or that the violation referred to in the notice has been cured, the Association shall Record a notice of compliance which shall state the legal description of the Lot against which the notice of violation was Recorded, and the recording data of the notice of violation, and shall state that the violation referred to in the notice of violation has been cured or that the violation did not exist. Failure by the Association to Record a notice of violation shall not constitute a waiver of any such violation, constitute any evidence that no violation exists with respect to a particular Lot or constitute a waiver of any right of the Association to enforce the Project Documents.

9.10 Laws, Ordinances and Regulations.

9.10.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws,

ordinances and regulations, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.10.2 Any violation of any state, municipal, or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

9.11 References to this Declaration in Deeds. Deeds to and instruments affecting any Lot or any other part of the Project may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

9.12 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

9.13 Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

9.14 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Johnson County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

9.15 No Absolute Liability. No provision of the Project Documents shall be interpreted or construed as imposing on Owners absolute liability for damage to the Lots. Owners shall only be responsible for damage to the Lots caused by the Owners' negligence or intentional acts.

9.16 Acknowledgement. The Owner acknowledges the undermine below the Farley Ledge (rock ledge), this ledge acts as the property line below the Project. The Owner understands and accepts the property acknowledging this geological condition.

9.17 Taxes and Other Encumbrances. Each Owner shall promptly pay, before delinquency, all taxes, assessments, liens, encumbrances or charges of every kind levied against or imposed upon such Owner or such Owner's lot which may, as a matter of law, be or become or result in a lien on any part of the Common Area which lien is prior to the easement granted and reserved in this Declaration. In the event of a breach of this covenant, the Association shall have, in addition to all other rights or remedies, the right (but not the obligation) to obtain the

discharge of any such lien by payment or otherwise, and collect from such Owner all costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

This Project is subject to a City of Lenexa Stormwater Facility Maintenance Agreement.

This Project is subject to a Declaration of Covenants (MERITEX)

Declarant:

LUXE LLC, a Kansas limited liability company

By: _____
Michael A. Christie, Manager

State of Kansas)

) ss.

County of Johnson)

EXHIBIT A

DESCRIPTION OF PROPERTY SUBJECT TO DECLARATION