

**DECLARATION OF COVENANTS, RESTRICTIONS, ASSESSMENTS AND
EASEMENTS OF BATTLE CREEK**

**A RESIDENTIAL DEVELOPMENT IN THE CITY OF OLATHE,
JOHNSON COUNTY, KANSAS**

Please return recorded document to:

**Spencer Fane LLP
Attn: Chad B. Cook
6201 College Boulevard, Suite 500
Overland Park, KS 66211**

**DECLARATION OF COVENANTS, RESTRICTIONS,
ASSESSMENTS AND EASEMENTS
OF BATTLE CREEK**

This is the Declaration of Covenants, Restrictions, Assessments and Easements of BATTLE CREEK made as of the __5th day of September_, 2024.

Recitals

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

B. The Declarant desires to create of this property a site of individually owned single family units and commonly owned areas and facilities.

Definitions

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

“Articles” and “Articles of Incorporation” mean the articles of incorporation, filed with the Secretary of State of Kansas, incorporating BATTLE CREEK Homes Association as a Kansas not for profit corporation, as amended from time to time.

“Association” and “BATTLE CREEK Homes Association, Inc.” means the entity created by the filing of the Articles.

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

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

“City” means the City of Olathe, Kansas.

“Common Areas” means (a) all areas and facilities within the Property designated by Declarant for the general use or benefit of all Owners and occupants of the Property, including any parks, green space, landscaping within the island areas and located within street right-of-way and landscaping features; and other recreational areas; sidewalks and walkways; signs, monuments, bridges; median strips and islands in streets; ponds, streams, creeks and drainage and retention facilities; streets and street lighting; and any fencing around the perimeter of the Addition; (b) any land deeded to the Association by or at the direction of Declarant; (c) any easements, leases, licenses or other rights of use granted to the Association by or at the direction of Declarant, and the land or other property which is the subject thereof; and (d) all buildings, structures and other improvements, fixtures and equipment and other tangible personal property owned by the Association and located on, or used in connection with or

forming a part of any of the foregoing; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Areas so enumerated will exist within the Property. Common Areas shall not include those portions of the Property labeled or described in this Declaration or on the Plat as part of a Unit.

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

“Declarant” means LANESRA BATTLE CREEK DEVELOPMENT LLC, a Kansas limited liability company, and its successors and assigns.

“Declaration” means this instrument, by which the Property is subjected to the covenants, restrictions, assessments and easements set forth herein.

“Lot” means a lot as shown as a separate lot on any recorded plat or replat of all or part of the Property upon which a single-family residence has been or will be constructed.

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

“Owner” means a Unit owner (other than the Declarant) as the context dictates.

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

“Plats” means the plats, plats of survey or replats of various parts of the Property filed from time to time with the Johnson County Register of Deeds’ Office.

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

“Property” means the tract of land hereinafter described, including all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto. The Property is legally described in Exhibit A attached hereto.

“Residential Development” means the Residential Development regime for the Property created by this Declaration.

“Turnover Date” is defined in Article VII Section 6.

“Unit” means collectively a Lot and the residence thereon, being that portion or portions of the Property constituting a “residential unit” or “units” of the Residential Development.

“Unit owner” and “Unit owners” mean that person or those persons owning the real estate in fee simple on which a Unit is located.

The Plan

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

ARTICLE I

THE LAND

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

ARTICLE II

NAME

The name by which the Residential Development shall be known is “BATTLE CREEK”.

ARTICLE III

PURPOSES; RESTRICTIONS

Section 1. Purpose. This Declaration is being made to establish separate individual parcels from the Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of the Units and the Common Areas and the wellbeing of Unit owners and occupants; and to establish an association of the Unit owners to administer the Residential Development and the Property, to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth, and to raise funds through assessments to accomplish these purposes.

Section 2. Restrictions. The Residential Development and the Property shall be benefited by and subject to the following restrictions:

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

conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or otherwise corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be the right of Declarant to maintain, during the period of its sale or rental of Units, but for no longer than a ten year period of time from the time of the closing of the first sale of a Unit to a bona fide purchaser, (A) one or more Units as sales and rental models and offices, and for storage and maintenance purposes, and (B) such other portions of the Property as Declarant may deem necessary, including, without limitation, any community building and the maintenance of a construction trailer, as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction or sale of Unit(s) or the Property, which right may not be limited or revoked without the specific consent of Declarant; and (iii) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

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

(c) Minimum Square Footage; Set Backs; Themes; Visible Areas.

(i) Each single-family dwelling to be built on a Lot will be subject to a front set back of 30 feet. Each single-family dwelling to be built on any Lot (as defined below) will be subject to a side set back of seven and a half (7.0) feet and a rear set back of ten (10) feet; provided, however that such rear set back may not encroach upon the stream corridor. Each single-family dwelling to be built on a Lot (as defined below) will be subject to a side set back of seven and a half feet and a rear set back of ten (10) feet.

(ii) The minimum square footage for each single-family dwelling to be built on a Reserve Lot is 4,000 (Finished) square feet. On an estate lot is 5000 (Finished) square feet.

(iii) Each single-family dwelling must be designed with a viable front, sides, and rear elevation that includes a mix of stone, stucco, brick or hardie lap. Variations for accents will be reviewed by the declarant, for replacement stucco or Hardie lap siding.

There will be no substitution for any type of engineered sheathing or siding to be used. The minimum standard will be to have any porch columns and wall surfaces facing the street on the front elevation to use a wainscot of stone, brick or a combination of stone brick and Hardie concrete siding. The Wainscoting should be between 36" on a 10' wall and 42" on a wall that exceeds 10'. All plans must be

approved by the Declarant. Each house must have a minimum of 3 car garage with a minimum width of 28.5'

(iv) Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds or window treatments with prior approval of the declarant. Which, from exterior observation, must be white, beige, brown, or gray, or as otherwise authorized by the Declarant or HOA Board. Or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof.

(v) No awning, canopy, flag, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or the Declarant. (The exception is an American Flag flown on approved wall mount or pole. The Flag cannot exceed 3'6" x 5') (Approval will be given by the declarant or HOA Board based on the pole type, size, and location. And for a house mounted flag all bracket and display hardware must be preapproved by the declarant and or HOA Board) Flags for sports teams or schools may be flown but not to be displayed more than 2 days in any given week. No political or social causes flags may be flown.

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

(vii) No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except voice intercoms and devices used exclusively for security purposes. By exception speakers for music to be played in the back yard around pools may be approved by the declarant upon written request.

(viii) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard. No wild flower or native grass beds are to be larger than 7.5% of the yard in which it is located. (Meaning the front yard or side yard or back yard) The front yard must have 70% of it area planted in a grass that is comprised of thin blade Fescues, Blue Grass, or Rye.

(ix) No lights or other illumination (other than street lights) shall be higher than the residence. Colored lights shall not be permitted except for holiday decorative lighting during the period from November 15 through January 15.

(x) No shed, barn, detached greenhouse or outbuilding, storage building, animal run, animal house, tree house or batting cage or clothesline shall be erected upon, moved onto or maintained upon any Reserve Lot. Estate lots may have a shed or detached out building that does not exceed 10% of the Finished square feet of the home located on the subject lot. Batting cages pools and recreational courts must be preapproved in the estate lots prior to construction by the declarant or HOA architectural committee. All outbuildings must be the same architectural and materials used on the main home. All plans must be preapproved by the declarant or the HOA board.

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

(xii) All fences must be approved by Declarant or the Board (or the Board's designee), the only type of fence that will be approved is an aluminum (wrought iron) style 5'tall panel fence or if no neighbors on all sides of the house contest and give their prior approval a Stone or brick fence (style and design must be preapproved by the declarant and or the HOA Board) can be installed and the fence cannot extend beyond the back plane of the rear of the home. The maximum height of any fence is five feet (5'). No fence can extend into the side yard of any lot. (Side yard meaning the property from the back corner to the front corner of the home)

(xiii) No Solar panels are permitted on any slop of roof that is visible from the street from the front of the home.

(d) Offensive Activities; Trash. No noxious or offensive activity shall be carried on with respect to any Unit or upon the Common Areas, nor shall any Unit or Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant. No trash, refuse, or garbage can or receptacle shall be placed on any Unit outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection.

(i) YARD ART there shall be no yard art permitted at any time other than for Christmas from 11/15 – 1/15 of any year. Halloween from 10/15 – 11/4 of any year any Yard Art that is unpermitted can and will be removed at the owners expense by the board of the HOA or the declarant. Any expense incurred and unpaid in the removal process both physically and via administratively will result in a lien be placed upon the unit. (Exception for this rule is a single bird bath not to exceed 4' in height or 3' in diameter.) Water Fountains that

are in a landscape bed are permitted as long as they are less than 4' in height and 3'6" in diameter.

(e) Garages and Vehicles.

(i) Garage doors shall remain closed at all reasonable times except when necessary. All units will be required to have a minimum of three car capacity at 28.5' of width.

(ii) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(iii) Overnight parking of motor vehicles of any type or character in Common Areas (other than designated off-street parking areas) is prohibited. No commercial truck, bus, boat, personal watercraft of any kind, trailer, camper, mobile home, or similar apparatus shall be left or stored overnight, except in an enclosed garage or as permitted in clause (v) below.

(iv) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed. For work being done on a residence or lot.

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

(A) Storing in an enclosed garage;

(B) Temporary parking for the purpose of loading and unloading (maximum of 48 hours on no more than four occasions per calendar year);

(C) No Day care's or pick-up and delivery type of business are permitted without the express written approval of the Declarant or the HOA. All request for permission must include a detailed designs and operating guidelines.

(D) With prior written approval of the Board.

(vi) The Board may enforce such restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as it, in its sole discretion, deems appropriate.

(f) Renting and Leasing. No Unit or part thereof shall be used for transient or hotel purposes, which is defined as: (i) rental of less than one month duration or under which occupants are provided customary hotel services such as room service for food and

beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. No lease shall be less than 12 months in duration. Any lease agreement shall be in writing, shall require that the tenant and other occupants comply with all provisions of the Declarations, shall provide that the lease shall be subject in all respects to the provisions of the Declarations, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Reserve Instruments shall be a default under the lease. Prior to the commencement of the term of a lease, the Unit owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect. Notwithstanding the existence of a lease, the Unit owner shall remain liable for all obligations, including, without limitation, the payment of dues, under this Declaration with respect to the Unit.

(g) Signs. No sign of any kind shall be displayed to the public view on the Property except: (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, provided they are approved by the Board; and (b) on the Common Areas and model Units, signs advertising the sale and/or rental of Units by the Declarant or its designee during the period of its initial sale and rental of Units. No other “for sale” or “for lease” signs shall be permitted. One political sign per candidate or issue, not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election. If these limitations on the use of signs, or any part thereof are determined to be unlawful, the Board reserves the right to regulate the use of signs in a manner not in violation of law.

(h) Maintenance and Replacements. Each Unit owner shall properly maintain the owner’s Unit in a neat, clean and orderly fashion and in good condition and repair at all times. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Board. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

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

(j) Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas

shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(k) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, restrictions on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (ii) the right of an occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the other Units or occupants. (AT the current time it is recommended that any unit has not more than 3 animal pets excluding fish). No Outdoor Kennels are permitted under any circumstances.

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

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

(n) Architectural Control. Following the completion of construction of any Unit, no significant landscaping change or any exterior addition or alteration shall be made thereto unless and until the plans and specifications showing the nature, kind, shape, height,

materials, color and location of the same shall have been submitted to and approved in writing by the Board or Architectural Control Committee. However, no such approval of the Board shall be required for the Declarant to construct the Units and Common Areas.

(o) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations including, without limitation, a fining policy, as it deems necessary or desirable to promote harmony, to serve the best interests of the Owners, as a whole, and the Association, and to protect and preserve the nature of the Residential Development and the Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

ARTICLE IV

IMPROVEMENT DESCRIPTIONS

Section 1. Residential Units. There are planned to be up to 31 single-family residential Units. The residential Units are and will be located on Lots as shown on the Plats. Each of Lots (or such other name as established by the Declarant from time to time).

ARTICLE V

UNITS

Section 1. Unit Designations. Each of the dwelling units is or will be designated by a Lot number shown on the Plat on which that Unit is located.

Section 2. Composition of Units.

(a) Unit Composition. Each Unit constitutes a single fee simple estate and consists of real estate within the boundaries designated for that Unit on the Plat, and all improvements located thereon. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(1) the building and improvements located within the boundaries designated for that Unit on the Plat;

(2) all fixtures and appliances installed for the exclusive use of that, and components of the foregoing, if any;

(3) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; and

(4) all areas outside the building and improvements located within the boundaries of the Lot designated on the Plat including, without limitation, the driveway, lawn, and landscaping within the Lot boundary.

ARTICLE VI

COMMON AREAS

Section 1. Common Areas – Description. All areas and facilities within the Property designated by Declarant for the general use or benefit of all Owners and occupants of the Property, except those portions labeled or described in this Declaration or on the Plats as a part of a Unit.

Section 2. Interest in Common Areas. The Association shall have a blanket easement over, under, and/or through the Common Areas to maintain, repair, and replace all improvements constituting the Common Areas. Each Unit owner shall be responsible for the “common expenses” as allocated among all of the Completed Units on an equal basis per Completed Unit. No Owner may waive or release any liability for common expenses. Further, the rights in the Common Areas shall not be separated from the Unit to which it appertains.

ARTICLE VII

HOMEOWNERS ASSOCIATION

Section 1. Establishment of Association. The Association has been formed or will be formed by the Declarant to serve as the owners’ Association. The Declarant will be the sole initial member of the Association. The Declarant, however, shall have no obligation to pay dues.

(a) Declarant shall be a member of the Association until Declarant elects in writing to relinquish its membership. Each other Owner shall, upon acquisition of fee simple title to any Lot and occupancy of the residence located thereon, automatically become a member of the Association. Each Owner shall be entitled to only one Association membership for each Unit owned by the Owner, and, subject to the provisions of Article VII, Section 6 pertaining to the election and removal of officers and the Board of Directors of the Association, shall have only one vote per Lot in the Association. If an Owner (other than Declarant) is comprised of more than one person and/or entity, they shall designate one of their members to hold the Association membership, it being the intention that for each Lot there shall be only one Association membership. Each member (other than Declarant) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or (5) if the Owner is or includes a limited liability company or an association, an individual who is a member of the limited liability company

or association. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner; otherwise, the Association may designate the party who is to be the Association member with respect to such Lot.

(b) A membership in the Association shall not be transferred, pledged or alienated in any way except as expressly provided in this Declaration. Subject to the provisions of paragraph (a) of this Section 1, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains; PROVIDED, HOWEVER, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

Section 2. Board of Directors.

(a) Subject to the provisions of subparagraph (b) hereof, the members of the Association shall elect the Board of Directors and the Board of Directors shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the Articles of Incorporation or Bylaws of the Association.

(b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in this Declaration to the contrary, prior to the Turnover Date, the Declarant shall be entitled to appoint all of the members of the Board of Directors.

Section 3. Indemnification.

(a) To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association, and Declarant (each, an “Indemnified Party”) against all claims, liabilities, damages, costs and expenses, including reasonable attorneys’ fees, incurred by the Indemnified Party in connection with any action taken pursuant to, or in connection with this Declaration, provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party’s duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

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

Section 4. Authority of Board. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and assess and collect funds for the payment thereof and to do all things, and exercise all rights provided by the Reserve Instruments that are not specifically reserved to Unit owners. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Association, acting through the Board, shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

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

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

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

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

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

(f) To enter into and perform agreements with the Declarant, other developers, other homes associations, and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common

areas, whether in or outside the Property, and the sharing of expenses related thereto.

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

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

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Property; and to do any other things necessary or desirable in the judgment of the board to keep any property in the Property neat in appearance and in good order if not provided by the City.

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

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

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

Section 5. Contracts with Declarant. The Association shall have the authority to enter into contracts with Declarant or an affiliate of Declarant for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing.

Section 6. Control of Association by Declarant. Notwithstanding anything in this Article VII or elsewhere in this Declaration to the contrary, Declarant shall have and maintain absolute and exclusive control of the Association, including appointment and removal in Declarant's sole discretion of all officers of the Association and members of the Board of Directors, until the date (the "Turnover Date") which is the earlier of (a) the expiration of 10 years from the date of recording of the most recent plat affecting the Residential Development, (b) on such date as all Units are owned and occupied by Owners; or (c) the effective date designated by Declarant in a notice to the members of the Association stating that Declarant relinquishes control. Until the Turnover Date, Declarant

will be entitled to cast all votes with respect to the election and removal of all officers of the Association and the Board of Directors and with respect to any other matter requiring the vote or approval of members of the Association as set forth herein or in the Association's Articles of Incorporation or Bylaws and to establish dues and assessments.

ARTICLE VIII

MAINTENANCE AND REPAIR: ASSOCIATION OBLIGATIONS

Section 1. **Association Duties and Responsibilities.** The Association shall:

(a) maintain, repair and replace all improvements constituting all of the Common Areas;

(b) provide lawn care, consisting of mowing and corresponding edging for 30 weeks a year, fertilizing and weed control of grass areas, trimming of all trees and bushes; Spring start-up, winterization, and maintenance of sprinkler systems, mulch and landscape bed maintenance in Common Areas that are not in the stream corridor or tree preservation area. Except as expressly limited herein, these services will be provided, for Common Areas, but such services shall not include the care of any areas made inaccessible to the Association by a lot owner;

(c) establish, maintain and expend reserve funds for exterior painting of applicable portions of the Common Areas every 8 years, the future repair and replacement of the Common Areas, for the future repair and replacement of the private walk ways;

(d) Clean catch basins, storm sewers and drainage facilities which are part of the Common Areas;

The Board, in its discretion, shall determine the scope and timing of the foregoing services and functions of the Association.

Except to the extent that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair any Unit, or component thereof, or personal property within any Unit. Further, the Association shall not have responsibility for the repair of any damage caused by the gross negligence or willful misconduct of a Unit owner, or their family members, tenants, guests, licensees, invitees or contractors (which repair shall be the responsibility of the Unit owner).

Section 2. **Individual Responsibility.** Each Owner shall repair and maintain their Unit, and all components thereof, owned by that Unit owner. Without limiting the generality of the foregoing, this repair and maintenance responsibility of an Owner shall include repair, maintenance and replacement of all appliances, all plumbing fixtures and electrical fixtures, and all windows, screens and doors, including the frames, sashes and jams, and the hardware therefore. Each Unit owner shall also be responsible for securing

extermination services for rodents or insects if needed for the Unit including, without limitation, removal of nests or birds from a chimney or squirrels from the attic of a Unit. Each Owner shall also be responsible for the repair, maintenance, and replacement of air conditioning pads, patio fences, back patios, and chimney flues. Except for those specific items listed as an Association responsibility in Article VIII, Section 1, each Owner shall repair and maintain his or her Unit. In the event a Unit owner fails to timely make a repair or perform maintenance required of that Owner, or in the event the need for maintenance or repair of any part of the Common Areas is caused by the negligent or intentional act of any owner or occupant, or is as a result of the failure of any Unit owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the owner's Unit and on that Unit owner. The determination that such maintenance or repair is necessary, or has been so caused by the Unit owner, shall be made by the Board. The Association shall have an easement over the Lots to maintain and/or repair said Unit owner's Lot and/or Unit. Notwithstanding the granting of said easement for maintenance purposes, each Unit owner has the right to otherwise exclude other Unit owners from entering upon or using the Unit owner's Lot.

ARTICLE IX

UTILITY SERVICES

Each Unit owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit. All Common area utility costs shall be common expenses and paid by the Association.

ARTICLE X

INSURANCE; LOSSES

Section 1. **Fire and Extended Coverage Insurance.** The Board shall obtain and maintain for all buildings, structures, fixtures and equipment owned by the Association and for the Association's personal property and supplies on the Property, at the Association's cost and as a common expense, blanket fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use. This insurance shall also be paid for by the Association, as a common expense.

Section 2. **Liability Insurance.** The Association shall obtain and maintain, at the Association's cost and as a common expense, a commercial policy of general liability insurance covering all of the Common Areas, public ways and any other areas under the Association's supervision, insuring the Association and the directors, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required

by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) \$1,000,000.00, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association.

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

Section 4. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, officers and directors liability insurance, and such other insurance as the Board may determine.

Section 5. Nominee; Power of Attorney. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders, and the Association, runs with the land, and is coupled with an interest.

Section 6. Unit Owners' Insurance. Each Unit owner shall obtain and maintain for the Unit owned by said Unit owner blanket fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to Units similar in construction, location and use. Each Unit owner shall also maintain such liability insurance customary with respect to Units similar in construction, location and use.

ARTICLE XI

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitation. Every Unit owner shall have a right and easement (i) for ingress to and egress from such owner's Lot and Unit, (ii) of enjoyment in, over and upon the Common Areas, and (iii) an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, including, without limitation, parking rules and regulations, and the right of the Board to suspend the rights to use the Common Areas by any Unit owner for any period during which any assessment against that owner's unit remains unpaid and for a period not to exceed 60 days for any violation of the Association's published rules and regulations, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof or to that unit's parking facilities. Each Unit owner shall be deemed to have delegated that owner's right of enjoyment to the Common Areas and to ingress and egress to the occupants of that owner's Unit.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of access to, over, under, upon and through all of the Property, including each Lot and the Common Areas, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to the Common Area. In the event of an emergency, the Association's right of access to the common area may be exercised without notice; otherwise, the Association shall give the Unit owners or occupants of a Unit no less than twenty-four hours advance notice prior to accessing the property.

Section 3. Easements for Encroachments. Each Lot and the Common Areas shall be subject to and benefited by easements for encroachments on or by any other Lot and upon the Common Areas created or arising by reason of encroachments; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Plats. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc., will be in substantial accord with the description of those boundaries that appears herein or on the Plats, shall and do exist so long as the encroachments remain.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Property contributing to the support of another building, utility line or improvement on another portion of the Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Property.

Section 5. Easements for Proper Operations. Easements in favor of the Association and the Declarant shall exist upon, over and under all of the Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all

walkways, and for all other purposes necessary for the proper operation of the Property. By these easements it shall be expressly permissible for the Declarant and/or the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Property by owners and occupants.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

Section 7. Additional Easements.

An easement or license to enter upon, locate, construct and maintain or authorize the location, construction of maintenance and use of conduits, water lines, storm pipes, sewer pipes and related facilities and structures, and street trees upon, over and under these areas outlined and designated on the Plat as "PUB/E" or "Public Utility Easement", is hereby granted to the City of Olathe, Kansas and other governmental entities as may be authorized by state law to use such easement for said purposes.

An easement or license to enter upon, locate, construct and maintain or authorize the location, construction, maintenance and use of electrical conduits, water, gas, and sewer pipes, poles, wires, drainage facilities, ducts, cables, and similar utility facilities upon, over and under those areas outlined and designated on the Plat as "Utility Easement" or "U/E", is hereby granted to the City of Olathe, Kansas and other governmental entities as may be authorized by state law to use such easement for said purposes, however all above ground utility cabinets are hereby restricted to the interior side or rear building setback yards and may not be placed within required front or corner side yards adjacent to street right of way. Each Unit Owner shall have the right and a license, in accordance with the Plat, to cross another Unit Owner's Lot to use those areas outlined and designated on the Plat as "Utility Easement" or "U/E" for purposes of ingress and egress to each owner's Lot and/or Unit or Single-Family Unit.

An easement or license is hereby granted to the Homes Association, the Developer, the Declarant or their authorized representatives to enter upon, plant or construct, relocate, remove and maintain entry monuments, fences, trees, bushes, sidewalks, irrigation

systems, berms and any other materials or items related to landscaping upon, over or under the Common Areas.

An easement or license is hereby granted to the City of Olathe, Kansas, or their authorized representatives to enter upon, locate, construct and maintain conduits, surface drainage facilities, subsurface drainage facilities, and similar facilities upon, over or under those areas outlined and designated on the Plat as "Drainage Easement" or "D/E".

An easement or license is hereby dedicated to the City of Olathe, Kansas to lay, construct, alter, repair, replace and operate one or more sewer lines and all appurtenances convenient for the collection of sanitary sewage, over and through those areas outlined and designated on the Plat as "Sanitary Sewer Easement" or "S/E".

Section 8. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over, under and upon each Unit and the Common Areas (a) for a ten year period of time from the date of the closing by Declarant of the first sale of a Unit to a bona fide purchaser, for access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods provided for warranties for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made by Declarant with Unit purchasers, and (c) for the initial sales and rental period, but for no longer than ten years from the time of the closing of the first sale of a Unit to a bona fide purchaser, to maintain and utilize one or more Units and appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

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

Section 9. Power of Attorney. Each Unit owner other than Declarant, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each Unit owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

Section 10. Stream Corridor Maintenance Agreement. The Declarant will enter into a Stream Corridor Maintenance Agreement with the City for each individual Estate Lot. Each such Stream Corridor Maintenance Agreement will be in such form as the Declarant and the City may agree. Each Stream Corridor Maintenance Agreement will encumber the respective Estate Lot and run with the land.

Section 11. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

ARTICLE XII

ASSESSMENTS AND ASSESSMENT LIENS: RESERVE FUNDS

Section 1. Types of Assessments. Each Unit owner shall be obligated, and by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) annual operating assessments payable annually to pay common expenses, (b) special assessments to pay common expenses and for capital improvements, and (c) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote and provide for the health, safety and welfare of owners in the Property and occupants and the best interests of the Property.

Section 3. Elements-Appportionments; Due Dates.

(a) Annual Operating Assessments Payable Annually.

(1) The Declarant shall directly pay or contribute to the Association the following amounts toward the “common expenses” of the Association:

a. All common expenses allocable to the period prior to the closing of the first sale by Declarant of a Completed Unit.

b. Until the Turnover Date, Declarant shall have the right (but not the obligation) to make non-interest bearing loans to the Association to provide the Association with adequate funds (in addition to assessments received from Completed Units and contributions from Declarant as provided above) to pay common expenses. Any such loans shall be repaid to the Declarant by the Association prior to the Turnover Date.

(2) Annual operating assessments to pay common expenses shall be payable annually and shall be assessed against (i) all Completed Units owned by parties other than the Declarant and (ii) all Completed Units rented by the Declarant to third parties. The first annual operating assessment for each such Completed

Unit shall be prorated based upon when it became a Completed Unit during the year.

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

- a. the estimated fiscal year’s cost of the maintenance, repair, and other services to be provided or paid for by the Association, including without limitation, landscaping and grounds maintenance; repairs to walks, driveways and parking areas; snow clearing and trash removal; management services; exterior painting in the Common Areas; lamp replacement in the Common Areas; electricity furnished to the Common Areas (including any taxes); taxes on property owned by the Association; cleaning of ponds; and any other property maintenance and operation expenses which may be required from time to time;
- b. the estimated fiscal year’s costs for insurance premiums to be provided and paid for by the Association;
- c. the estimated fiscal year’s costs for utility services not separately metered or charged to Unit owners;
- d. the estimated amount required to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;
- e. an amount deemed adequate by the Board to maintain a reserve for the cost of maintaining private streets, exterior painting, maintaining, repairing and/or replacements of Common Areas; and
- f. the estimated fiscal year’s costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

(4) The Board shall thereupon allocate to each Completed Unit subject to assessment on an equal per Unit basis, and thereby establish the annual operating assessment for each separate Completed Unit. For administrative convenience, any such assessment may be rounded so that annual installment will be in whole dollars.

(5) The annual operating assessment shall be payable annually. The due date of such annual installments shall be established by the Board.

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

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

(8) The rate of annual assessment per Completed Units for 2025 shall initially be set at \$125.00 per month (\$1,500.00 per year). Additionally at Closing there will be an additional one time fee of \$250.00. The rate of annual assessment upon each Completed Unit may be increased (i) by the Board from time to time, without a vote of the members, by up to 20% over the rate of annual assessment in effect for the preceding year for each year starting in 2025, or (ii) at any time by any amount by a vote of the members (being for this limited purpose solely the members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Association to perform its duties as specified in this Declaration. However, the provisions set forth in this paragraph shall not limit or restrict the power of the Board under Article XII, Section 3(a), paragraph 6 pertaining to the assessment of special operating assessments.

(b) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments and any special operating assessments, the Board may levy, at any time, special assessments to construct, reconstruct or replace capital improvements to the extent that reserves therefor and any applicable insurance proceeds with respect thereto are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to

occupants) shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to ten percent (10%) or more of that fiscal year's budget, without the prior consent of owners owning at least 60% of the then existing Completed Units.

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

(c) Special Individual Unit Assessments. The Board shall levy assessments against an individual Unit, and the owner or owners thereof, to reimburse the Association for those costs incurred in connection with that unit or units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of that owner, and that owner's interest, late charges, fines, enforcement and collection charges, and arbitration charges).

Section 4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit owner subject thereto. Written notice mailed or delivered to that owner's Unit shall constitute notice to that owner, unless the Unit owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that owner.

Section 5. Assessments Payable at Closing. At the initial closing on the purchase of a Unit, the Unit owner shall pay the assessment attributable to insurance and two months dues to reserves.

Section 6. Effect of Nonpayment of Assessment; Remedies of the Association.

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

(b) If any installment of an assessment is not paid within ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule (or if the Board fails to establish a rate by rule, at the rate of eight percent (8%) per annum), (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, (iii) charge the cost of collection, including attorneys' fees and other out-of-pocket expenses and/or (iv) cut-off or restrict the services to be provided to the Unit by the Association and the use of the Common Areas.

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

(d) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of nonpayment of assessments for the unpaid balance of that assessment, including all future installments thereof, interest, late fees, a \$200.00 lien fee, and costs, including attorneys' fees, may be filed with the Register of Deeds of Johnson County, Kansas, pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by an officer or other agent of the Association.

(e) Such liens securing payment of a Delinquent Amount shall continue for a period of five years from the date of recording of the Delinquency Statement and no longer, unless, within such time, suit shall have been instituted for the collection of the Delinquent Amount, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment therein.

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

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

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

(i) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, and costs, including attorneys' fees, bring or join in an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys'

fees) shall be added to the amount of any such assessment, to the extent permitted by Kansas law.

(j) No claim of the Association for assessments and charges shall be subject to setoffs, off sets, or counterclaims.

(k) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas or the services provided by the Association, or any part thereof, or by abandonment of his, her or its Unit.

(l) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of the Property, and accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

Section 7. Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor owner. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter.

Section 8. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Contribution to Reserves Upon Sale of Units. Upon the closing of the sale of each Completed Unit by Declarant, Declarant shall collect from the buyer and cause to be paid over to the Association, for deposit into its reserve funds, a sum equal to two months prorated of the then annual assessment in effect for the Completed Units subject to assessment.

ARTICLE XIII

RESERVE INSTRUMENT REQUIREMENTS

Section 1. Association Control. Except in its capacity as an owner of unsold Completed Units, the Declarant or its agent will not retain a property interest in any of the Common Areas after the Turnover Date, except as expressly provided or contemplated herein. The owners of Completed Units that have been sold by the Declarant or its agent

will assume control of the Association and the Common Areas, as elsewhere provided herein.

Section 2. Declarant's Obligations. Declarant or its designee, in its capacity as owner of Completed Units not yet sold, will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Reserve Instrument, or established by law.

Section 3. Unit Owners' Rights and Obligations. Each Unit owner will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Reserve Instrument, or established by law, during the time of that owner's ownership of a fee simple interest in a Unit.

ARTICLE XIV

AMENDMENTS

Section 1. Power to Amend. Prior to the Turnover Date, the Declarant or its assigns may amend this Declaration without the consent of any Unit owner. Except as otherwise specifically provided herein, after the Turnover Date, additions to, changes in, or amendment of this Declaration shall require the consent of Unit owners owning at least two thirds (2/3) of the Units and, until the sale by Declarant of the last contemplated Unit, the Declarant. Notwithstanding the foregoing:

(a) The consent of Unit owners of at least eighty percent (80%) of the Units shall be required to terminate this Declaration; and

(b) Declarant reserves and shall have the absolute unilateral right and power to amend the Reserve Instruments, to the extent necessary to (i) cause the Reserve Instruments to comply with Kansas law or conform to the requirements of the City or to conform with the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit, (ii) correct typographical errors or factual errors or omissions the correction of which would not impair the interest of any Unit owner, mortgagee, insurer, or guarantor, (iii) to add additional property to the Property, or (iv) comply with any requirement the City makes as a condition to approval by the City of some matter relating to the development of the Property. No such amendment by the Declarant shall require the consent of any Unit owner.

Section 2. Method to Amend. An amendment to this Declaration, adopted with the consent of Unit owners, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to this Declaration shall be duly executed by it with the

same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by this Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Register of Deeds of Johnson County, Kansas.

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

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Covenants With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having a right, title or interest in or to all or any part of the Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2. Enforcement. In addition to any other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Completed Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Completed Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Completed Unit owner shall have rights of action against each other for failure to comply with the provisions of the Reserve Instruments and applicable law, and with respect to decisions made pursuant to authority granted thereunder, provided, the Association shall have the right to assess reasonable charges against a Completed Unit owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration, and provided, further, that neither the Association nor its directors, officers, or other representatives, shall be liable to any Completed Unit owner or occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Completed Unit owner, occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such director, officer or other representative. Notwithstanding the foregoing, in the event of any dispute between the Association and any Completed Unit owner or occupant that cannot be settled by agreement between them, no Complete Unit owner shall institute legal proceedings against the Association without

first submitting the dispute to nonbinding mediation. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provisions hereof or restrictions against the Completed Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with Kansas law, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

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

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

[Signature Page to Follow]

31

Exhibit A

**DECLARATION OF COVENANTS, RESTRICTIONS, ASSESSMENTS AND
EASEMENTS OF BATTLE CREEK**

**AN ADDITION IN THE CITY OF OLATHE,
JOHNSON COUNTY, KANSAS**

Please return recorded document to:

**Spencer Fane LLP
Attn: Chad B. Cook
6201 College Boulevard, Suite 500
Overland Park, KS 66211**

**DECLARATION OF COVENANTS, RESTRICTIONS,
ASSESSMENTS AND EASEMENTS
OF BATTLE CREEK**

This is the Declaration of Covenants, Restrictions, Assessments and Easements of BATTLE CREEK made as of the ____ day of _____, 2024.

Recitals

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

B. The Declarant desires to create of this property a site of individually owned single family units and commonly owned areas and facilities.

Definitions

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

“Articles” and “Articles of Incorporation” mean the articles of incorporation, filed with the Secretary of State of Kansas, incorporating BATTLE CREEK Homes Association as a Kansas not for profit corporation, as amended from time to time.

“Association” and “BATTLE CREEK Homes Association, Inc.” means the entity created by the filing of the Articles.

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

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

“City” means the City of Olathe, Kansas.

“Common Areas” means (a) all areas and facilities within the Property designated by Declarant for the general use or benefit of all Owners and occupants of the Property, including any parks, green space, landscaping within the island areas and located within street right-of-way and landscaping features; and other recreational areas; sidewalks and walkways; signs, monuments, bridges; median strips and islands in streets; ponds, streams, creeks and drainage and retention facilities; streets and street lighting; and any fencing around the perimeter of the Addition; (b) any land deeded to the Association by or at the direction of Declarant; (c) any easements, leases, licenses or other rights of use granted to the Association by or at the direction of Declarant, and the land or other property which is the subject thereof; and (d) all buildings, structures and other improvements, fixtures and equipment and other tangible personal property owned by the Association and located on, or used in connection with or

forming a part of any of the foregoing; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Areas so enumerated will exist within the Property. Common Areas shall not include those portions of the Property labeled or described in this Declaration or on the Plat as part of a Unit.

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

“Declarant” means BATTLE CREEK DEVELOPMENT LLC, a Kansas limited liability company, and its successors and assigns.

“Declaration” means this instrument, by which the Property is subjected to the covenants, restrictions, assessments and easements set forth herein.

“Lot” means a lot as shown as a separate lot on any recorded plat or replat of all or part of the Property upon which a single-family residence has been or will be constructed.

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

“Owner” means a Unit owner (other than the Declarant) as the context dictates.

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

“Plats” means the plats, plats of survey or replats of various parts of the Property filed from time to time with the Johnson County Register of Deeds’ Office.

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

“Property” means the tract of land hereinafter described, including all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto. The Property is legally described in Exhibit A attached hereto.

“Residential Development” means the Residential Development regime for the Property created by this Declaration.

“Turnover Date” is defined in Article VII Section 6.

“Unit” means collectively a Lot and the residence thereon, being that portion or portions of the Property constituting a “residential unit” or “units” of the Residential Development.

“Unit owner” and “Unit owners” mean that person or those persons owning the real estate in fee simple on which a Unit is located.

The Plan

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

ARTICLE I

THE LAND

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

ARTICLE II

NAME

The name by which the Residential Development shall be known is “BATTLE CREEK”.

ARTICLE III

PURPOSES; RESTRICTIONS

Section 1. Purpose. This Declaration is being made to establish separate individual parcels from the Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of the Units and the Common Areas and the wellbeing of Unit owners and occupants; and to establish an association of the Unit owners to administer the Residential Development and the Property, to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth, and to raise funds through assessments to accomplish these purposes.

Section 2. Restrictions. The Residential Development and the Property shall be benefited by and subject to the following restrictions:

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

conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or otherwise corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be the right of Declarant to maintain, during the period of its sale or rental of Units, but for no longer than a ten year period of time from the time of the closing of the first sale of a Unit to a bona fide purchaser, (A) one or more Units as sales and rental models and offices, and for storage and maintenance purposes, and (B) such other portions of the Property as Declarant may deem necessary, including, without limitation, any community building and the maintenance of a construction trailer, as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction or sale of Unit(s) or the Property, which right may not be limited or revoked without the specific consent of Declarant; and (iii) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

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

(c) Minimum Square Footage; Set Backs; Themes; Visible Areas.

(i) Each single-family dwelling to be built on a Lot will be subject to a front set back of 25 feet. Each single-family dwelling to be built on an Estate Lot (as defined below) will be subject to a side set back of seven feet and a rear set back of ten feet; provided, however that such rear set back may not encroach upon the stream corridor. Each single-family dwelling to be built on a Lot (as defined below) will be subject to a side set back of seven feet and a rear set back of ten feet.

(ii) The minimum square footage for each single-family dwelling to be built on an Lot is 1,700 (Finished) square feet.

(iii) Each single-family dwelling must be designed with a viable front elevation that includes a mix of stone, stucco or Hardie lap siding. The minimum standard will be to have any porch columns and wall surfaces facing the street on the front elevation to use a wainscot of stone, brick or a combination of stone brick and Hardie concrete siding. The Wainscoting should be between 36" on a 10' wall and 42" on a wall that exceeds 10'. The remaining three sides can be a woodsman or Smart siding type of exterior sheathing. All plans must be approved by the Declarant. Adjustments on stone application to the front can be adjusted by the declarant for front elevations that are Hardie concrete lap siding. Each house must have a minimum of 2 car garage with a minimum width of 20'

(iv) Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige, brown, or gray, or as otherwise authorized by the Declarant or HOA Board) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof.

(v) No awning, canopy, flag, shutter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or the Declarant. (The exception is an American Flag flown on approved wall mount or pole. The Flag cannot exceed 3'x5') (Approval will be given by the declarant or HOA Board based on the pole type, size, and location. And for a house mounted flag all bracket and display hardware must be preapproved by the declarant and or HOA Board)

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

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

(viii) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard. No wild flower or native grass beds are to be larger than 7.5% of the yard in which it is located. (Meaning the front yard or side yard or back yard) The front yard must have 70% of it area planted in a grass that is comprised of thin blade Fescues, Blue Grass, or Rye.

(ix) No lights or other illumination (other than street lights) shall be higher than the residence. Colored lights shall not be permitted except for holiday decorative lighting during the period from November 15 through January 15.

(x) No shed, barn, detached greenhouse or outbuilding, storage building, animal run, animal house, tree house or batting cage or clothesline shall be erected upon, moved onto or maintained upon any Lot.

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

(xii) All fences must be approved by Declarant or the Board (or the Board's designee), the only type of fence that will be approved is an aluminum style 5'tall panel fence or if no neighbors on all sides of the house contest and give their prior approval a cedar fence (style and design must be preapproved by the declarant and or the HOA Board) can be installed and the fence cannot extend beyond the back plane of the rear of the home. The maximum height of any fence is five feet (5'). No fence can extend into the side yard of any lot.

(xiii) No Solar panels are permitted on any slope of roof that is visible from the street from the front of the home.

(d) Offensive Activities; Trash. No noxious or offensive activity shall be carried on with respect to any Unit or upon the Common Areas, nor shall any Unit or Common Area be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant. No trash, refuse, or garbage can or receptacle shall be placed on any Unit outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection.

(i) YARD ART there shall be no yard art permitted at any time other than for Christmas from 11/15 – 1/15 of any year. Halloween from 10/15 – 11/4 of any year any Yard Art that is unpermitted can and will be removed at the owners expense by the board of the HOA or the declarant. Any expense incurred and unpaid in the removal process both physically and via administratively will result in a lien be placed upon the unit. (Exception for this rule is a single bird bath not to exceed 4' in height or 3' in diameter.) Water Fountains that are in a landscape bed are permitted as long as they are less than 4' in height and 3'6" in diameter.

(e) Garages and Vehicles.

(i) Garage doors shall remain closed at all reasonable times except when necessary. All units will be required to have a minimum of two car capacity at 20' of width.

(ii) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(iii) Overnight parking of motor vehicles of any type or character in Common Areas (other than designated off-street parking areas) is prohibited. No commercial truck, bus, boat, personal watercraft of any kind, trailer, camper,

mobile home, or similar apparatus shall be left or stored overnight, except in an enclosed garage or as permitted in clause (v) below.

(iv) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed. For work being done on a residence or lot.

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

(A) Storing in an enclosed garage;

(B) Temporary parking for the purpose of loading and unloading (maximum of 48 hours on no more than four occasions per calendar year);

(C) No Day care's or pick-up and delivery type of business are permitted without the express written approval of the Declarant or the HOA. All request for permission must include a detailed designs and operating guidelines.

(D) With prior written approval of the Board.

(vi) The Board may enforce such restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as it, in its sole discretion, deems appropriate.

(f) Renting and Leasing. No Unit or part thereof shall be used for transient or hotel purposes, which is defined as: (i) rental of less than one month duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. No lease shall be less than 12 months in duration. Any lease agreement shall be in writing, shall require that the tenant and other occupants comply with all provisions of the Declarations, shall provide that the lease shall be subject in all respects to the provisions of the Declarations, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Reserve Instruments shall be a default under the lease. Prior to the commencement of the term of a lease, the Unit owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect. Notwithstanding the existence of a lease, the Unit owner shall remain liable for all obligations, including, without limitation, the payment of dues, under this Declaration with respect to the Unit.

(g) Signs. No sign of any kind shall be displayed to the public view on the Property except: (a) on the Common Areas, signs regarding and regulating the use of the

Common Areas, provided they are approved by the Board; and (b) on the Common Areas and model Units, signs advertising the sale and/or rental of Units by the Declarant or its designee during the period of its initial sale and rental of Units. No other “for sale” or “for lease” signs shall be permitted. One political sign per candidate or issue, not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election. If these limitations on the use of signs, or any part thereof are determined to be unlawful, the Board reserves the right to regulate the use of signs in a manner not in violation of law.

(h) Maintenance and Replacements. Each Unit owner shall properly maintain the owner’s Unit in a neat, clean and orderly fashion and in good condition and repair at all times. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Board. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

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

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

(k) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, restrictions on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (ii) the right of an occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the other Units or occupants. (AT the current time it is recommended that any unit has not more than 3 animal pets excluding fish)

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

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

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

(o) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations including, without limitation, a fining policy, as it deems necessary or desirable to promote harmony, to serve the best interests of the Owners, as a whole, and the Association, and to protect and preserve the nature of the Residential Development and the Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

ARTICLE IV

IMPROVEMENT DESCRIPTIONS

Section 1. Residential Units. There are planned to be up to 51 single-family residential Units. The residential Units are and will be located on Lots as shown on the Plats. Each of Lots (or such other name as established by the Declarant from time to time).

ARTICLE V

UNITS

Section 1. Unit Designations. Each of the dwelling units is or will be designated by a Lot number shown on the Plat on which that Unit is located.

Section 2. Composition of Units.

(a) Unit Composition. Each Unit constitutes a single fee simple estate and consists of real estate within the boundaries designated for that Unit on the Plat, and all improvements located thereon. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(1) the building and improvements located within the boundaries designated for that Unit on the Plat;

(2) all fixtures and appliances installed for the exclusive use of that, and components of the foregoing, if any;

(3) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; and

(4) all areas outside the building and improvements located within the boundaries of the Lot designated on the Plat including, without limitation, the driveway, lawn, and landscaping within the Lot boundary.

ARTICLE VI

COMMON AREAS

Section 1. Common Areas – Description. All areas and facilities within the Property designated by Declarant for the general use or benefit of all Owners and occupants of the Property, except those portions labeled or described in this Declaration or on the Plats as a part of a Unit.

Section 2. Interest in Common Areas. The Association shall have a blanket easement over, under, and/or through the Common Areas to maintain, repair, and replace all improvements constituting the Common Areas. Each Unit owner shall be responsible for the “common expenses” as allocated among all of the Completed Units on an equal

basis per Completed Unit. No Owner may waive or release any liability for common expenses. Further, the rights in the Common Areas shall not be separated from the Unit to which it appertains.

ARTICLE VII

HOMEOWNERS ASSOCIATION

Section 1. Establishment of Association. The Association has been formed or will be formed by the Declarant to serve as the owners' Association. The Declarant will be the sole initial member of the Association. The Declarant, however, shall have no obligation to pay dues.

(a) Declarant shall be a member of the Association until Declarant elects in writing to relinquish its membership. Each other Owner shall, upon acquisition of fee simple title to any Lot and occupancy of the residence located thereon, automatically become a member of the Association. Each Owner shall be entitled to only one Association membership for each Unit owned by the Owner, and, subject to the provisions of Article VII, Section 6 pertaining to the election and removal of officers and the Board of Directors of the Association, shall have only one vote per Lot in the Association. If an Owner (other than Declarant) is comprised of more than one person and/or entity, they shall designate one of their members to hold the Association membership, it being the intention that for each Lot there shall be only one Association membership. Each member (other than Declarant) must be (1) an individual who is an Owner, or (2) if the Owner is or includes a partnership, an individual who is a partner, or (3) if the Owner is or includes a corporation, an officer of the corporation, or (4) if the Owner is or includes a trust, an individual who is a trustee or beneficiary of the trust, or (5) if the Owner is or includes a limited liability company or an association, an individual who is a member of the limited liability company or association. Each Owner shall give notice to the Association of the name and address of the individual who will hold the Association membership for such Owner; otherwise, the Association may designate the party who is to be the Association member with respect to such Lot.

(b) A membership in the Association shall not be transferred, pledged or alienated in any way except as expressly provided in this Declaration. Subject to the provisions of paragraph (a) of this Section 1, membership in the Association shall automatically be transferred to the new Owner upon the transfer of fee simple title to the Lot to which the membership appertains; PROVIDED, HOWEVER, the Association shall not be responsible for providing notices to the new member under this Declaration until notice of the transfer and of the name and address of the new member has been given to the Association.

Section 2. Board of Directors.

(a) Subject to the provisions of subparagraph (b) hereof, the members of the Association shall elect the Board of Directors and the Board of Directors shall, by majority rule, conduct all of the business of the Association, except when membership votes are required pursuant to this Declaration or pursuant to the Articles of Incorporation or Bylaws of the Association.

(b) Notwithstanding anything contained in the preceding subparagraph (a) or elsewhere in this Declaration to the contrary, prior to the Turnover Date, the Declarant shall be entitled to appoint all of the members of the Board of Directors.

Section 3. Indemnification.

(a) To the fullest extent permitted by law, the Association shall indemnify each officer and director of the Association, and Declarant (each, an “Indemnified Party”) against all claims, liabilities, damages, costs and expenses, including reasonable attorneys’ fees, incurred by the Indemnified Party in connection with any action taken pursuant to, or in connection with this Declaration, provided the Indemnified Party did not act, fail to act or refuse to act willfully, in a grossly negligent manner or with fraudulent or criminal intent in the performance of the Indemnified Party’s duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

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

Section 4. Authority of Board. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and assess and collect funds for the payment thereof and to do all things, and exercise all rights provided by the Reserve Instruments that are not specifically reserved to Unit owners. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Association, acting through the Board, shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Association’s name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Units; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or

plats in which such restrictions, obligations, agreements and reservations are set forth. The expense cost of any such enforcement proceedings by the Association shall be paid out of the general funds of the Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Declarant or any Owner from enforcing any building, use or other restrictions in its or his own name.

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

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

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

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

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

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

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

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Property; and to do any other things necessary or desirable in the judgment of the board to keep any property in the Property neat in appearance and in good order if not provided by the City.

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

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

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

Section 5. Contracts with Declarant. The Association shall have the authority to enter into contracts with Declarant or an affiliate of Declarant for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing.

Section 6. Control of Association by Declarant. Notwithstanding anything in this Article VII or elsewhere in this Declaration to the contrary, Declarant shall have and maintain absolute and exclusive control of the Association, including appointment and removal in Declarant's sole discretion of all officers of the Association and members of the Board of Directors, until the date (the "Turnover Date") which is the earlier of (a) the expiration of 10 years from the date of recording of the most recent plat affecting the Residential Development, (b) on such date as all Units are owned and occupied by Owners; or (c) the effective date designated by Declarant in a notice to the members of the Association stating that Declarant relinquishes control. Until the Turnover Date, Declarant will be entitled to cast all votes with respect to the election and removal of all officers of the Association and the Board of Directors and with respect to any other matter requiring the vote or approval of members of the Association as set forth herein or in the Association's Articles of Incorporation or Bylaws and to establish dues and assessments.

ARTICLE VIII

MAINTENANCE AND REPAIR: ASSOCIATION OBLIGATIONS

Section 1. Association Duties and Responsibilities. The Association shall:

(a) maintain, repair and replace all improvements constituting all of the Common Areas;

(b) provide lawn care, consisting of mowing and corresponding edging for 30 weeks a year, fertilizing and weed control of grass areas, trimming of all trees and bushes; Spring start-up, winterization, and maintenance of sprinkler

systems, mulch and landscape bed maintenance in Common Areas that are not in the stream corridor or tree preservation area. Except as expressly limited herein, these services will be provided, for Common Areas, but such services shall not include the care of any areas made inaccessible to the Association by a lot owner;

(c) establish, maintain and expend reserve funds for exterior painting of applicable portions of the Common Areas every 8 years, the future repair and replacement of the Common Areas, for the future repair and replacement of the private walk ways;

(d) Clean catch basins, storm sewers and drainage facilities which are part of the Common Areas;

The Board, in its discretion, shall determine the scope and timing of the foregoing services and functions of the Association.

Except to the extent that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair any Unit, or component thereof, or personal property within any Unit. Further, the Association shall not have responsibility for the repair of any damage caused by the gross negligence or willful misconduct of a Unit owner, or their family members, tenants, guests, licensees, invitees or contractors (which repair shall be the responsibility of the Unit owner).

Section 2. Individual Responsibility. Each Owner shall repair and maintain their Unit, and all components thereof, owned by that Unit owner. Without limiting the generality of the foregoing, this repair and maintenance responsibility of an Owner shall include repair, maintenance and replacement of all appliances, all plumbing fixtures and electrical fixtures, and all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefore. Each Unit owner shall also be responsible for securing extermination services for rodents or insects if needed for the Unit including, without limitation, removal of nests or birds from a chimney or squirrels from the attic of a Unit. Each Owner shall also be responsible for the repair, maintenance, and replacement of air conditioning pads, patio fences, back patios, and chimney flues. Except for those specific items listed as an Association responsibility in Article VIII, Section 1, each Owner shall repair and maintain his or her Unit. In the event a Unit owner fails to timely make a repair or perform maintenance required of that Owner, or in the event the need for maintenance or repair of any part of the Common Areas is caused by the negligent or intentional act of any owner or occupant, or is as a result of the failure of any Unit owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the owner's Unit and on that Unit owner. The determination that such maintenance or repair is necessary, or has been so caused by the Unit owner, shall be made by the Board. The Association shall have an easement over the Lots to maintain and/or repair said Unit owner's Lot and/or Unit. Notwithstanding the granting of said

easement for maintenance purposes, each Unit owner has the right to otherwise exclude other Unit owners from entering upon or using the Unit owner's Lot.

ARTICLE IX

UTILITY SERVICES

Each Unit owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit. All Common area utility costs shall be common expenses and paid by the Association.

ARTICLE X

INSURANCE; LOSSES

Section 1. Fire and Extended Coverage Insurance. The Board shall obtain and maintain for all buildings, structures, fixtures and equipment owned by the Association and for the Association's personal property and supplies on the Property, at the Association's cost and as a common expense, blanket fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use. This insurance shall also be paid for by the Association, as a common expense.

Section 2. Liability Insurance. The Association shall obtain and maintain, at the Association's cost and as a common expense, a commercial policy of general liability insurance covering all of the Common Areas, public ways and any other areas under the Association's supervision, insuring the Association and the directors, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) \$1,000,000.00, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Areas, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association.

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

Section 4. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, officers and directors liability insurance, and such other insurance as the Board may determine.

Section 5. Nominee; Power of Attorney. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders, and the Association, runs with the land, and is coupled with an interest.

Section 6. Unit Owners' Insurance. Each Unit owner shall obtain and maintain for the Unit owned by said Unit owner blanket fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to Units similar in construction, location and use. Each Unit owner shall also maintain such liability insurance customary with respect to Units similar in construction, location and use.

ARTICLE XI

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitation. Every Unit owner shall have a right and easement (i) for ingress to and egress from such owner's Lot and Unit, (ii) of enjoyment in, over and upon the Common Areas, and (iii) an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, including, without limitation, parking rules and regulations, and the right of the Board to suspend the rights to use the Common Areas by any Unit owner for any period during which any assessment against that owner's unit remains unpaid and for a period not to exceed 60 days for any violation of the Association's published rules and regulations, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof or to that unit's parking facilities. Each Unit owner shall be deemed to have delegated that owner's right of enjoyment to the Common Areas and to ingress and egress to the occupants of that owner's Unit.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of access to, over, under, upon and through all of the Property, including each Lot and the Common Areas, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to the Common Area. In the event of an emergency, the Association's right of access to the common area may be exercised without notice; otherwise, the Association shall give the Unit owners or occupants of a Unit no less than twenty-four hours advance notice prior to accessing the property.

Section 3. Easements for Encroachments. Each Lot and the Common Areas shall be subject to and benefited by easements for encroachments on or by any other Lot and upon the Common Areas created or arising by reason of encroachments; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Plats. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc., will be in substantial accord with the description of those boundaries that appears herein or on the Plats, shall and do exist so long as the encroachments remain.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Property contributing to the support of another building, utility line or improvement on another portion of the Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Property.

Section 5. Easements for Proper Operations. Easements in favor of the Association and the Declarant shall exist upon, over and under all of the Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Property. By these easements it shall be expressly permissible for the Declarant and/or the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Property by owners and occupants.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, delivery men, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and

the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

Section 7. Additional Easements.

An easement or license to enter upon, locate, construct and maintain or authorize the location, construction of maintenance and use of conduits, water lines, storm pipes, sewer pipes and related facilities and structures, and street trees upon, over and under these areas outlined and designated on the Plat as “PUB/E” or “Public Utility Easement”, is hereby granted to the City of Olathe, Kansas and other governmental entities as may be authorized by state law to use such easement for said purposes.

An easement or license to enter upon, locate, construct and maintain or authorize the location, construction, maintenance and use of electrical conduits, water, gas, and sewer pipes, poles, wires, drainage facilities, ducts, cables, and similar utility facilities upon, over and under those areas outlined and designated on the Plat as “Utility Easement” or “U/E”, is hereby granted to the City of Olathe, Kansas and other governmental entities as may be authorized by state law to use such easement for said purposes, however all above ground utility cabinets are hereby restricted to the interior side or rear building setback yards and may not be placed within required front or corner side yards adjacent to street right of way. Each Unit Owner shall have the right and a license, in accordance with the Plat, to cross another Unit Owner’s Lot to use those areas outlined and designated on the Plat as “Utility Easement” or “U/E” for purposes of ingress and egress to each owner’s Lot and/or Unit or Single-Family Unit.

An easement or license is hereby granted to the Homes Association, the Developer, the Declarant or their authorized representatives to enter upon, plant or construct, relocate, remove and maintain entry monuments, fences, trees, bushes, sidewalks, irrigation systems, berms and any other materials or items related to landscaping upon, over or under the Common Areas.

An easement or license is hereby granted to the City of Olathe, Kansas, or their authorized representatives to enter upon, locate, construct and maintain conduits, surface drainage facilities, subsurface drainage facilities, and similar facilities upon, over or under those areas outlined and designated on the Plat as “Drainage Easement” or “D/E”.

An easement or license is hereby dedicated to the City of Olathe, Kansas to lay, construct, alter, repair, replace and operate one or more sewer lines and all appurtenances convenient for the collection of sanitary sewage, over and through those areas outlined and designated on the Plat as “Sanitary Sewer Easement” or “S/E”.

Section 8. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over, under and upon each Unit and the Common Areas (a) for a ten year period of time from the date of the closing by Declarant of the first sale of a Unit to a bona fide purchaser, for access to and for the

purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods provided for warranties for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made by Declarant with Unit purchasers, and (c) for the initial sales and rental period, but for no longer than ten years from the time of the closing of the first sale of a Unit to a bona fide purchaser, to maintain and utilize one or more Units and appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

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

Section 9. Power of Attorney. Each Unit owner other than Declarant, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each Unit owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

Section 10. Stream Corridor Maintenance Agreement. The Declarant will enter into a Stream Corridor Maintenance Agreement with the City for each individual Estate Lot. Each such Stream Corridor Maintenance Agreement will be in such form as the Declarant and the City may agree. Each Stream Corridor Maintenance Agreement will encumber the respective Estate Lot and run with the land.

Section 11. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

ARTICLE XII

ASSESSMENTS AND ASSESSMENT LIENS: RESERVE FUNDS

Section 1. Types of Assessments. Each Unit owner shall be obligated, and by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) annual operating assessments payable annually to pay common expenses, (b) special assessments to pay common

expenses and for capital improvements, and (c) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote and provide for the health, safety and welfare of owners in the Property and occupants and the best interests of the Property.

Section 3. Elements-Appportionments; Due Dates.

(a) Annual Operating Assessments Payable Annually.

(1) The Declarant shall directly pay or contribute to the Association the following amounts toward the “common expenses” of the Association:

a. All common expenses allocable to the period prior to the closing of the first sale by Declarant of a Completed Unit.

b. Until the Turnover Date, Declarant shall have the right (but not the obligation) to make non-interest bearing loans to the Association to provide the Association with adequate funds (in addition to assessments received from Completed Units and contributions from Declarant as provided above) to pay common expenses. Any such loans shall be repaid to the Declarant by the Association prior to the Turnover Date.

(2) Annual operating assessments to pay common expenses shall be payable annually and shall be assessed against (i) all Completed Units owned by parties other than the Declarant and (ii) all Completed Units rented by the Declarant to third parties. The first annual operating assessment for each such Completed Unit shall be prorated based upon when it became a Completed Unit during the year.

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

a. the estimated fiscal year’s cost of the maintenance, repair, and other services to be provided or paid for by the Association, including without limitation, landscaping and grounds maintenance; repairs to walks, driveways and parking areas; snow clearing and trash removal; management services; exterior painting in the Common Areas; lamp replacement in the Common Areas; electricity furnished to the Common Areas (including any taxes); taxes on property owned by the Association;

cleaning of ponds; and any other property maintenance and operation expenses which may be required from time to time;

b. the estimated fiscal year's costs for insurance premiums to be provided and paid for by the Association;

c. the estimated fiscal year's costs for utility services not separately metered or charged to Unit owners;

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

e. an amount deemed adequate by the Board to maintain a reserve for the cost of maintaining private streets, exterior painting, maintaining, repairing and/or replacements of Common Areas; and

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

(4) The Board shall thereupon allocate to each Completed Unit subject to assessment on an equal per Unit basis, and thereby establish the annual operating assessment for each separate Completed Unit. For administrative convenience, any such assessment may be rounded so that annual installment will be in whole dollars.

(5) The annual operating assessment shall be payable annually. The due date of such annual installments shall be established by the Board.

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

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

(8) The rate of annual assessment per Completed Units for 2025 shall initially be set at \$120.00 per month (\$1,440.00 per year). Additionally at Closing there will be an additional one time fee of \$150.00. The rate of annual assessment upon each Completed Unit may be increased (i) by the Board from time to time, without a vote of the members, by up to 20% over the rate of annual assessment in effect for the preceding year for each year starting in 2025, or (ii) at any time by any amount by a vote of the members (being for this limited purpose solely the members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Association to perform its duties as specified in this Declaration. However, the provisions set forth in this paragraph shall not limit or restrict the power of the Board under Article XII, Section 3(a), paragraph 6 pertaining to the assessment of special operating assessments.

(b) Special Assessments for Capital Improvements.

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

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

(c) Special Individual Unit Assessments. The Board shall levy assessments against an individual Unit, and the owner or owners thereof, to reimburse the Association for those costs incurred in connection with that unit or units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of that owner, and that owner's interest, late charges, fines, enforcement and collection charges, and arbitration charges).

Section 4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit owner subject thereto. Written notice mailed or delivered to that owner's Unit shall constitute notice to that owner, unless the Unit owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that owner.

Section 5. Assessments Payable at Closing. At the initial closing on the purchase of a Unit, the Unit owner shall pay the assessment attributable to insurance and two months dues to reserves.

Section 6. Effect of Nonpayment of Assessment; Remedies of the Association.

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

(b) If any installment of an assessment is not paid within ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board, from time to time, establishes by rule (or if the Board fails to establish a rate by rule, at the rate of eight percent (8%) per annum), (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, (iii) charge the cost of collection, including attorneys' fees and other out-of-pocket expenses and/or (iv) cut-off or restrict the services to be provided to the Unit by the Association and the use of the Common Areas.

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

(d) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of nonpayment of assessments for the unpaid balance of that assessment, including all future installments thereof, interest, late fees, a \$200.00 lien fee, and costs, including attorneys' fees, may be filed with the Register of Deeds of Johnson County, Kansas, pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by an officer or other agent of the Association.

(e) Such liens securing payment of a Delinquent Amount shall continue for a period of five years from the date of recording of the Delinquency Statement and no longer,

unless, within such time, suit shall have been instituted for the collection of the Delinquent Amount, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment therein.

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

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

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

(i) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, and costs, including attorneys' fees, bring or join in an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent permitted by Kansas law.

(j) No claim of the Association for assessments and charges shall be subject to setoffs, off sets, or counterclaims.

(k) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas or the services provided by the Association, or any part thereof, or by abandonment of his, her or its Unit.

(l) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of the Property, and accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

Section 7. Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of

the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor owner. The foregoing will not relieve any successor owner from the obligation for assessments accruing thereafter.

Section 8. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Contribution to Reserves Upon Sale of Units. Upon the closing of the sale of each Completed Unit by Declarant, Declarant shall collect from the buyer and cause to be paid over to the Association, for deposit into its reserve funds, a sum equal to two months prorated of the then annual assessment in effect for the Completed Units subject to assessment.

ARTICLE XIII

RESERVE INSTRUMENT REQUIREMENTS

Section 1. Association Control. Except in its capacity as an owner of unsold Completed Units, the Declarant or its agent will not retain a property interest in any of the Common Areas after the Turnover Date, except as expressly provided or contemplated herein. The owners of Completed Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Areas, as elsewhere provided herein.

Section 2. Declarant's Obligations. Declarant or its designee, in its capacity as owner of Completed Units not yet sold, will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Reserve Instrument, or established by law.

Section 3. Unit Owners' Rights and Obligations. Each Unit owner will be vested with the rights and be subject to the duties of a Unit owner set forth herein, or in any other Reserve Instrument, or established by law, during the time of that owner's ownership of a fee simple interest in a Unit.

ARTICLE XIV

AMENDMENTS

Section 1. Power to Amend. Prior to the Turnover Date, the Declarant or its

assigns may amend this Declaration without the consent of any Unit owner. Except as otherwise specifically provided herein, after the Turnover Date, additions to, changes in, or amendment of this Declaration shall require the consent of Unit owners owning at least two thirds (2/3) of the Units and, until the sale by Declarant of the last contemplated Unit, the Declarant. Notwithstanding the foregoing:

(a) The consent of Unit owners of at least eighty percent (80%) of the Units shall be required to terminate this Declaration; and

(b) Declarant reserves and shall have the absolute unilateral right and power to amend the Reserve Instruments, to the extent necessary to (i) cause the Reserve Instruments to comply with Kansas law or conform to the requirements of the City or to conform with the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit, (ii) correct typographical errors or factual errors or omissions the correction of which would not impair the interest of any Unit owner, mortgagee, insurer, or guarantor, (iii) to add additional property to the Property, or (iv) comply with any requirement the City makes as a condition to approval by the City of some matter relating to the development of the Property. No such amendment by the Declarant shall require the consent of any Unit owner.

Section 2. Method to Amend. An amendment to this Declaration, adopted with the consent of Unit owners, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to this Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by this Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Register of Deeds of Johnson County, Kansas.

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

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Covenants With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and

bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having a right, title or interest in or to all or any part of the Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2. Enforcement. In addition to any other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Completed Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Completed Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Completed Unit owner shall have rights of action against each other for failure to comply with the provisions of the Reserve Instruments and applicable law, and with respect to decisions made pursuant to authority granted thereunder, provided, the Association shall have the right to assess reasonable charges against a Completed Unit owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration, and provided, further, that neither the Association nor its directors, officers, or other representatives, shall be liable to any Completed Unit owner or occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Completed Unit owner, occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such director, officer or other representative. Notwithstanding the foregoing, in the event of any dispute between the Association and any Completed Unit owner or occupant that cannot be settled by agreement between them, no Complete Unit owner shall institute legal proceedings against the Association without first submitting the dispute to nonbinding mediation. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provisions hereof or restrictions against the Completed Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with Kansas law, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

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

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

[Signature Page to Follow]

62

Exhibit A