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DECLARATION OF CONDOMINIUM

LONDON PARK CONDOMINIUMS

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DECLARATION OF CONDOMINIUM

LONDON PARK CONDOMINIUMS

THIS DECLARATION OF CONDOMINIUM FOR LONDON PARK CONDOMINIUMS is made as of this 16th day of October, 2006, pursuant to Kansas Statutes K.S.A. §58-3101 et. seq. (the "Act"), commonly known as the Apartment Ownership Act of the State of Kansas by London Square Partners, a Kansas limited liability company (the "Declarant").

RECITALS:

A. The Declarant is the fee simple owner of the Property (as herein defined), the Buildings (as herein defined) and all improvements and appurtenances thereto.

B. The Declarant filed, simultaneously herewith, a certain plat of Condominium of the Property in the office of the Register of Deeds of Johnson County, Kansas (the "Plat").

C. The Declarant hereby establishes the plan for the ownership in fee simple of the real property, consisting of the area or space contained in each Unit (herein defined) in the Condominium, and the plan for the co-ownership by the separate Unit owners of all of the remaining property within the Condominium as tenants-in-common.

DECLARATION:

NOW, THEREFORE, the Declarant hereby declares that the Condominium is and shall be held, conveyed, mortgaged, encumbered, leased, used, occupied and improved, subject to the following described limitations, covenants, obligations, restrictions, conditions, reservations, subdivisions, easements, liens, charges, and assessments, all of which are established in order to carry out a general plan for the development, improvement and sale of residential Units, pursuant to the Act and each of which shall constitute covenants running with the land and shall bind and inure to the benefit of the Declarant, each Owner of a Unit, and all parties who now have or may hereafter acquire any right, title or interest in the Condominium or any part of the Condominium, whether as sole owners, joint owners, tenants by the entireties, tenants-in-common, or otherwise, as well as their respective heirs, successors, executors, administrators and assigns.

ARTICLE I. DEFINITIONS

As used in this Declaration, unless the context otherwise requires, the following terms shall have the meanings described below:

Section 1.1 "Articles" and "Articles of Incorporation" shall mean the Articles of Incorporation, filed with the Secretary of State of the State of Kansas, incorporating London Park Condominiums Association as a Kansas not-for-profit corporation, as amended from time to time.

Section 1.2 “Assessments” shall mean the assessments that may be levied by the Association pursuant to Article VII hereof.

Section 1.3 “Association” shall mean London Park Condominiums Association, Inc. an entity which shall administer this Condominium, and the members of which shall consist of all of the Owners, created by the filing of the Articles and is one and the same as the Association required for the Condominium under the Act.

Section 1.4 “Board” or “Board of Directors” shall mean the body, regardless of name, designated in this Declaration or in the Bylaws of the Association, to act on behalf of and be responsible for over-seeing and carrying out the day-to-day business of the Association.

Section 1.5 “Building” shall mean any building or any part thereof now or hereafter located on and forming part of the Condominium.

Section 1.6 “Bylaws” shall mean the Bylaws adopted by the Association and attached hereto as Exhibit C, and all amendments thereto.

Section 1.7 “City” shall mean the City of Overland Park, Johnson County, Kansas.

Section 1.8. “Common Areas” (as more fully defined in Section 2.11 below) shall mean all areas within the entire Condominium designed for the common use and benefit of more than one Owner, including all improvements, and all real and personal property described in this Declaration and future amendments, but excluding the Units.

Section 1.9. “Common Area Interest” shall mean the percentage assigned to each Unit that establishes each Owner’s undivided interest in the Common Areas, and liability for Common Expenses, as further described in Section 3.07 below.

Section 1.10. “Common Expense Liability” shall mean the liability for Common Expenses assessed to each Unit in accordance with each Owner’s Common Area Interest.

Section 1.11. “Common Expenses” shall mean expenditures made or financial liabilities incurred by the Association, together with any allocations to reserves, including, but not limited to, (a) all sums lawfully assessed against the Common Areas by the Association; (b) all expenses of administration and management, insurance, maintenance, repair and replacement of the Common Areas, including, without limitation, the costs of salaries, expenses and fees of persons administering the Association and/or Common Areas, fees of legal counsel deemed necessary by the Board to protect the Association, payments of any judgment against or other liabilities incurred by the Association, settlement of any claims against the Association, insurance premiums for Condominiums, utilities, repairs, cleaning, upkeep, replacements, and security of the Common Areas; and (c) all other expenses declared to be Common Expenses by the Act, this Declaration, or the Bylaws.

Section 1.12. “Condominium” shall mean the aggregate of the entire Property and all Buildings and improvements described herein, together with any additional real estate and improvements added to and made subject to this Declaration in accordance herewith.

Section 1.13. "Declarant" shall mean London Square Partners, LLC, a Kansas limited liability company, and its heirs, beneficiaries, successors and assigns.

Section 1.14. "Declarant Control Period" shall mean the period of time from the date hereof to the earliest of any of the following to occur:

(a) four months after seventy-five percent (75%) of the Units have been conveyed to an Owner or Owners other than the Declarant; or

(b) voluntary surrender of any such power by the Declarant, which shall be accomplished by the Declarant's recording with the Register of Deeds of Johnson county, Kansas a written assignment of Declarant's rights to the Association.

Section 1.15. "Declaration" shall mean this Declaration of Condominium of London Park Condominiums as recorded in the office of the Register of Deeds of Johnson County, Kansas, together with any other recorded amendments and supplements from time to time.

Section 1.16. "Development Rights" shall mean any rights, or combination of rights, reserved by the Declarant in the Declaration to create Units, Common Areas, or Limited Common Areas within the Condominium; to subdivide Units or convert Units into Common Areas; or to withdraw real estate from the Condominium.

Section 1.17. "Identifying Numbers" shall mean a symbol or address that identifies only one Unit in the Condominium.

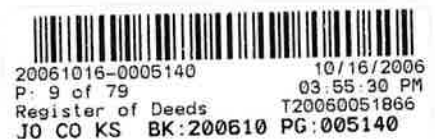
Section 1.18. "Limited Common Areas" shall mean a part of the Common Areas reserved for the exclusive use of one or more but fewer than all of the Units, and allocated by designation on the Plat, in this Declaration, or by the provisions of the Act, as further described in Section 2.12.

Section 1.19. "Majority" shall mean a vote by those Owners representing more than fifty percent (50%) of the Units, exercised in person or by proxy at a duly convened meeting at which a quorum is present.

Section 1.20. "Member" shall mean an Owner, each of whom shall belong to the Association by virtue of its ownership of a Unit. Each Owner shall be deemed to have one (1) membership unit in the Association for each Unit owned, regardless of the fact that a given Owner may include more than one Person.

Section 1.21. "Mortgage" shall mean a mortgage covering all or any portion of a Unit or the Condominium.

Section 1.22. "Mortgagee" shall mean the holder of a Mortgage on any part of the Condominium, or any Unit. **"Eligible Mortgagee"** shall mean those Mortgagees that are holders of a first mortgage on a Unit who have submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of eligible mortgage holders.



Section 1.23. "Officer" shall mean any person holding office in the Association pursuant to the Bylaws of the Association, but shall not include members of the Board of Directors unless such directors are also officers pursuant to the Bylaws.

Section 1.24. "Owner" shall mean the Declarant and all other Persons who purchase or acquire a Unit or Units in the Condominium. A Person having an interest in a Unit solely as security for an obligation, such as a Mortgagee, shall not be an Owner. Ownership of a Unit shall include the ownership of certain other rights, titles, interests and estates described in this Declaration, as well as ownership of the Unit itself. **"Parking Space"** shall mean an outdoor parking stall or car port that may be assigned to an Owner by Declarant as described herein.

Section 1.26. "Person" shall mean any natural person, trust, partnership, corporation, limited liability company, estate, business trust, association, joint venture, government, governmental subdivision or agency or other legal or commercial entity; provided, however, that in the case of a land trust, "Person" refers to the beneficiary of the trust rather than to the trust itself or to the trustee.

Section 1.27. "Plans" shall mean any drawing or set of drawings of the Condominium, as contained in the Plat, prepared by a registered architect or engineer, containing all information required by the Act, and all amendments thereto

Section 1.28. "Plat" shall mean that certain plat of condominium for London Park Condominiums filed simultaneously herewith in the office of the Register of Deeds of Johnson County, Kansas, and all amendments thereto or replats thereof, incorporated herein by reference.

Section 1.29. "Property" shall mean that certain real estate legally described on Exhibit A, attached hereto and incorporated herein by reference, located in Johnson County, Kansas, together with any other areas subsequently added as provided herein.

Section 1.30. "Quorum" shall mean, unless provided otherwise in the Bylaws, the presence, at a meeting, of Owners or proxies of Owners entitled to cast twenty percent (20%) of the outstanding votes in the Association. "Quorum" shall mean the presence of, at a meeting of members of the Board, a Majority of the Board.

Section 1.31. "Special Declarant Rights" shall mean those Development Rights and certain other rights which the Declarant reserves to itself, including those rights set forth in Article XI of this Declaration, and as this Declaration may be amended from time to time.

Section 1.32. "Special Assessments" shall mean those assessments described in Section 7.05 herein.

Section 1.33. "Special Unit Expenses" shall mean those costs incurred by or attributable to a particular Unit or Unit Owner for its own benefit, including, but not limited to, individual Parking Spaces and/or storage spaces, windows, decks, deck railings, patios, patio railings, comprehensive property and liability insurance coverage attributable to the Units only, and Limited Common Areas appurtenant to a specific Unit but not the Common Areas. For the sake of convenience, such costs may be billed to the Association but shall be payable by each Owner by special assessment.

Section 1.34. "State" shall mean the State of Kansas.

Section 1.35. "Unit" or "Units" shall mean those portions of the Condominium not owned in common with other Owners, as more specifically described in the Plat and all amendments to the Plat, together with the other rights, titles, interests and estates described in this Declaration. Each individual Unit shall include:

(a) a separate fee simple interest in the air space within each Unit conveyed, and in the interior wall surfaces of the walls surrounding each separately numbered Unit as shown on the Plat, and in all elements within such interior wall surfaces, and in the elements identified as relating to that Unit on the Plat and any amendments to the Plat;

(b) an undivided fee interest in the Common Areas as a tenant-in-common with other Owners, also referred to as a Common Area Interest; and

(c) exclusive easements in, over, across and through the Common Areas and those areas within the Common Areas designated as Limited Common Areas on the Plat or in this Declaration, which such easements shall include an unrestricted, perpetual right of ingress and egress to such Owner's Unit.

One (1) Unit shall include all contiguous spaces defined by the Plat or in this Declaration which are accessible to one another without going through any Common Areas, whether located on the same or on another floor, including, but not limited to, the patios and storage areas adjoining the patios of each Unit.

ARTICLE II. DESCRIPTION OF THE CONDOMINIUM

Section 2.01. Name. The name of the Condominium is "London Park Condominiums." The Condominiums shall be situated entirely within Johnson County, Kansas.

Section 2.02. Submission of Condominium to the Act. The Declarant hereby submits the Condominium to the provisions of the Act, subject to the reservations, restrictions and easements contained in this Declaration, the Association's Articles, and the Bylaws (including any and all supplements and amendments thereto which may be duly adopted from time to time). All roads, drives, lanes, parking lots or areas, walkways, and other ways commonly used for vehicular and pedestrian traffic, as now or hereafter located on the Condominium which are not dedicated as public on the Plat, shall be private ways, and no dedication to the public of such ways for vehicular and pedestrian traffic is intended, but the same are hereby dedicated to the use and benefit of all Owners, their grantees, heirs, personal representatives agents, successors and assigns, and to their guests, invitees, and business visitors, for ingress and egress over said private ways.

Section 2.03. Plat and Plans. The Plat shall contain all information required by the Act, and shall be certified by a registered and licensed surveyor. The Declarant and all Owners are subject to all provisions (easements, licenses, restrictions etc.) on the Plat. The existing physical boundaries of each Unit shall be conclusively presumed to be its boundaries, as more

particularly provided in the Plat and the Act. The Plans shall contain all information required by the Act, and shall be certified by an engineer or architect.

Section 2.04. Maximum Number of Units. The Condominium shall consist of a maximum of sixty-eight (68) Units.

Section 2.05. Indivisibility of a Unit. Each Unit, the Common Area Interest of that Unit, and the appurtenant Limited Common Areas shall together comprise one Unit, shall be inseparable, and may be conveyed, leased, devised or encumbered only as one Unit, provided, however that an Owner may combine Units according to the provisions of the Act, and according to the provisions of this Declaration, including, but not limited to, Sections 2.10 and 4.02. No Unit may be partitioned or in any way separated from the Condominium.

Section 2.06. Description of Units. The Plat included as part of this Declaration sets forth the description of each Unit and its Identifying Number. A description of each Unit which sets forth the name of the Condominium, the recording data for this Declaration, the county in which the Condominium is located, and the Identifying Number of the Unit, is a sufficient legal description of the Unit and all rights, obligations, and interests, appurtenant to the Unit which were created by this Declaration or the Bylaws.

Section 2.07. Separate Assessment. Whenever there is any Owner other than the Declarant, each Unit, together with its interest in the Common Areas, shall constitute for all purposes a separate parcel of real estate and shall be separately taxed and assessed.

Section 2.08. Encroachments. If any portion of the Common Areas encroaches upon a Unit or Units, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, shall and does exist. A valid easement also exists with respect to that portion of the Common Areas occupied by any part of a Unit not contained within the physical boundaries of such Unit, including, but not limited to, space occupied by heating and air conditioning equipment, utility lines and similar equipment which serves only one Unit. For title or other purposes, such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Areas or the Units.

Section 2.09. Intentionally Deleted.

Section 2.10. Unit Boundaries. The boundaries of each respective Unit shall be as described in this Section 2.10. Unit boundaries shall include the interior wall surfaces of all walls surrounding the Unit as shown and enumerated on the Plat and all elements within such wall surfaces, including, but not necessarily limited to, floors, ceiling surfaces, plumbing, wiring, conduits and cables, utility service lines, all interior walls not part of walls surrounding the Unit, all materials constituting any part of the finished surfaces, and all air space. All windows, all doors in exterior walls, garage doors, storage area doors, deck railings, and patio railings shall not be included as part of the Unit boundaries, but shall be limited common elements as set forth in Section 2.12 below. Except as set forth in the definition of Limited Common Areas, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit. The areas between the interior surfaces of all party walls shall not be within the

boundaries of a Unit. Combining Units according to the terms of the Act and the provisions hereof shall not be deemed an alteration of boundaries.

Section 2.11 Common Areas. The Common Areas shall mean the entire Condominium, excluding the Units, but specifically including the following areas intended for the common use and benefit of all Owners:

- (a) The land constituting the Property.
- (b) The storage or maintenance buildings not within the Unit boundaries as defined in Section 2.10, the playground equipment or facilities, and recreational improvements, structures or equipment, and all structures of any kind located on the land constituting the Property.
- (c) The walkways, streets (including drives or streets not maintained by the City), vehicular entrances and exits to the Condominium, the parking areas (except for Parking Spaces assigned as Limited Common Areas), all yards, landscaped areas (including facilities related thereto such as, without limitation, sprinkler systems), play areas, the area around the fountain, and recreation areas which are located within the Property and outside the Unit boundaries as described herein.
- (d) All foundations, columns, girders, beams, supports, bearing walls, party walls of Units excluding interior Unit wall surfaces that are part of the Unit boundaries, exterior walls, roofs, all structures, improvements and equipment situated on the roofs.
- (e) Utility stacks, vent chutes and any and all appurtenances which may be located within said utility stacks or vent chutes, including (without limitation) all ducts, wires, lines and conduits (including, without limitation, cable television), chutes, pipes, and all utility service lines and facilities outside of the Unit boundaries.
- (f) All portions of the walls not within the Unit Boundaries shall be a part of the Common Areas. The areas of all party walls behind and between the interior surfaces facing a Unit shall be Common Areas. No bearing wall or column may be removed or otherwise penetrated or affected without a building permit from the City and the prior written approval of the Association, together with a supporting report from a structural engineering firm designated by the Association.
- (g) The pool, the concrete pool deck and the pump house adjacent to the pool.
- (h) Any other areas listed as Common Areas on the Plat.

Section 2.12 Limited Common Areas Certain parts of the Common Areas, designated as "Limited Common Areas" herein and/or on the Plat, are hereby set aside and reserved for the exclusive use of the Owners of specific Units. The respective Owners shall have an exclusive easement for the use of such Limited Common Areas designated as Limited Common Areas and assigned to such Unit(s).

(b) All Parking Spaces are hereby assigned to the Declarant. During the Declarant Control Period, Declarant may unilaterally and in its sole discretion assign the Parking Spaces to specific Units upon recording of a writing so indicating such assignment(s) with the office of the Register of Deeds of Johnson County, Kansas. In the event that no such assignment is made in writing, the Parking Spaces shall be deemed hereby to be assigned to the Association upon expiration of the Declarant Control Period.

(c) The basement of each building is a Limited Common Area, as shown on the Plat. The Declarant hereby reserves the right to create, control and assign storage lockers in the basement of the buildings, as described in Section 10.5 hereof. Except for those portions of the basements that are assigned to and reserved for the exclusive use of the Declarant or its affiliates or specifically assigned to individual Unit Owners as storage areas, the entire basement area is hereby assigned to the Association. The basements shall contain, among other things, storage, laundry and mechanical facilities. These facilities of each basement are hereby set aside and reserved for the exclusive use of the Owners of the Units that reside in that respective building.

(d) No part or component of any Limited Common Area may be removed, altered, repaired or replaced, except by the Association or Declarant; and then any such repairs, alterations or replacements shall be in conformity to this Declaration. The Association may assess the costs of all such repairs, alterations or replacements as Special Unit Expenses attributable to specific Owners to whom such Limited Common Areas are assigned.

(e) All doors in Unit exterior walls (including Unit entry doors, storm doors and screen doors, if any), storage area doors (if any), all windows, patios that are attached to a Unit and related railings, and all decks and related railings shall be Limited Common Area and are hereby assigned to the Unit to which such items physically adjoin and are appurtenant. Each Owner must obtain prior written approval of the Association regarding the style, color, appearance and type of all such items. The Unit Owner will be responsible to keep all such items in good repair and for the cost of maintaining and insuring all such items.

(f) If any chute, flue, duct, wire, condensing unit, utility meters, furnace or air conditioning unit, conduit, bearing wall, bearing column, or any other fixture lies outside (or partially outside) the Unit Boundaries, that item (or portion of that item) serving only the particular Unit shall be a Limited Common Area and that portion serving more than one Unit or serving any part of the Common Areas shall be Common Areas.

ARTICLE III. THE ASSOCIATION

Section 3.1 Name and Organization. The Declarant shall form and establish the Association as a not-for-profit corporation, to provide for the maintenance and upkeep of the Common Areas of the Condominium, to carry on the administration of the Association, and to provide such other services as its Members desire for their common benefit. The name of the Association shall be "London Park Condominiums Owners' Association."



Section 3.2 Ownership. A Unit shall be a fee simple estate and may be held and owned by any Person or Persons singularly, as joint tenants, as tenants-in-common, tenants by the entireties, or in any real property tenancy relationship recognized under the laws of the State.

Section 3.03. Membership. Each Owner shall be a Member of the Association and, by its purchase or acquisition and ownership of a Unit in the Condominium, shall be deemed to have agreed to be bound by all the provisions of this Declaration and all amendments, as well as by the Articles of Incorporation and Bylaws of the Association. No Owner may avoid the obligations and burdens coincident to ownership of a Unit or membership in the Association.

Section 3.4 Sale or Other Transfer. Upon sale or other transfer of its Unit to a new Owner, the transferring Owner shall be relieved of liability for any assessments levied on such Unit by the Association accruing after the closing date of such sale or transfer. All such assessments levied or accrued prior to the closing date shall be paid at or prior to the closing by the transferor or seller.

Section 3.5 Exclusiveness of Ownership. Each Owner shall be entitled to exclusive ownership and possession of his Unit. Each Owner may use the Common Areas and Limited Common Areas in accordance with the purposes for which they are intended, but only without hindering or encroaching upon the lawful rights of the other Owners.

Section 3.6 Mechanics' and Materialmen's Liens. No labor performed or materials furnished and incorporated in a Unit, notwithstanding the consent or request of the Owner, his agent, contractor or subcontractor, shall be the basis for filing a lien against the Common Areas. Each Owner shall indemnify and hold harmless each of the other Owners and the Association from and against all losses, damages, costs and expenses, including, without limitation, reasonable attorneys' fees, arising from any lien against the Unit of any other Owner or against the Common Areas for construction performed or for labor, materials, services or other products incorporated in the indemnifying Owner's Unit at such Owner's request.

Section 3.7 Share of Common Area Interest and Common Expense Liability.

(a) Each Unit Owner shall have and be deemed to own, by virtue of their respective ownership of a Unit or Units, a share or percentage of the undivided interests in all the Common Areas, based upon the total square footage of Units owned by a particular Owner to the total square footage of all Units in the Condominium as described on the Plat and in this Declaration. The extent or amount of such ownership shall be expressed as a percentage of Common Area Interest. The extent or amount of Common Area expense liability shall be expressed as a percentage of Common Expense Liability.

(b) The allocation of the Common Area Interest and Common Area Liability to each Owner is set forth in Exhibit B attached and incorporated by reference as part of this Declaration.

(c) In addition to their liability for Common Expenses, each Owner shall also pay any and all assessments by the Association for "Special Unit Expenses" in the amount attributable to its Units and Limited Common Areas as determined by the Association in its reasonable discretion. Special Unit Expenses may be based upon any of actual or

estimated costs to the Association attributable to an Owner, independent billings of respective creditors, usage, estimated insurable values, insurance risks, or on the basis of the percentage allocations set forth on Exhibit B. Special Unit Expenses may include (without limitation) real estate taxes or assessments, comprehensive property and liability insurance premiums applicable to each Unit, cost of upkeep and repair (or replacement) of Limited Common Areas appurtenant to the Unit and not already paid by the Unit Owner, as well as, late charges, fines or penalties imposed by the Board upon specific Owners from time to time.

Section 3.8 One Membership Per Unit. Ownership of each Unit shall entitle the record Owner to one (1) membership in the Association and one (1) vote per Unit, irrespective of the number of Persons or entities that comprise the ownership of each such Unit (i.e., only one membership and one vote per Unit). Ownership of a Unit shall be the sole qualification for membership. Mortgagees or other Persons or entities who hold an interest merely as security for the performance of an obligation shall not be Members unless and until fee title is indefeasibly vested in such Person. Membership shall be appurtenant to and may not be separated from the ownership of any Unit.

Section 3.9 Membership Inseparable from Ownership. The membership in the Association held by any Owner of a Unit shall not be transferred, pledged or alienated in any way, except upon the sale or disposition of the Unit, and then only to the purchaser or transferee of such Unit. Any attempt to make a prohibited transfer shall be void and of no effect, and shall not be reflected upon the books or records of the Association.

Section 3.10. Owner Maintenance. Each Owner shall maintain and keep his Unit in good condition and repair, including the fixtures thereof, and all Limited Common Areas appurtenant to such Owner's Unit. Maintenance of the Limited Common Areas that physically adjoin a Unit shall be the responsibility of and at the cost of the Unit Owner at their expense and must be performed in accordance with the requirements and standards set forth in this Declaration, and the Bylaws and rules and regulations of the Association.

Section 3.11. Liability for Negligent Acts. If any Owner shall fail to maintain any repair its Unit, or if a Unit must be maintained or repaired as a result of the willful or negligent act of its Owner, his family, guests or invitees, and such maintenance or repair is not covered or paid for by insurance either on such Unit or the Common Areas or Limited Common Areas, the cost of such maintenance or repairs shall be added to and become a part of the Special Unit Expense applicable to such Unit.

Section 3.12. Declaration and Bylaws. Each Owner shall comply strictly with the provisions of this Declaration, the Association's Articles, the Bylaws and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the foregoing shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Association on behalf of the Owners or, to the extent permitted by law, by an aggrieved Owner.

Section 3.13. Relocation of Boundaries. The Owners of adjoining Units may relocate the boundaries between their Units upon application to the Association and otherwise as may be

provided in the Act; provided, however, that if the relocation is allowed, the Owners of the Units whose boundaries are relocated shall promptly pay all costs incurred by the Association, including, without limitation, all attorneys', architects', surveyors' and recording fees to accomplish such relocation, and the Association shall have a lien for such costs enforceable in the same manner as a lien for Assessments.

Section 3.14. Association Maintenance. The Association shall maintain and keep the Common Areas and the Limited Common Areas in good condition and repair, in accordance with the terms of this Declaration, the Bylaws and the rules and regulations of the Association. The costs incurred in taking care of any of the Limited Common Areas not otherwise maintained by the Unit Owners will be billed to the Owner of the Unit to which it is appurtenant as a Special Unit Expense. All other expenses shall be billed to the Owners as Regular Assessments or Special Assessments, as set forth in this Declaration.

**ARTICLE IV.
RESTRICTIONS ON USE AND IMPROVEMENTS**

In addition to limitations established by law and by additional rules and regulations which may from time to time be promulgated by the Board, all Owners shall observe the restrictions set forth in this Article IV.

Section 4.1 Restrictions. The Units, the Common Areas, and Limited Common Areas shall be subject to the following:

(a) Each Unit not owned by the Declarant (or its affiliates) shall be occupied only by the Owners and their immediate family or, subject to the provisions of Section 4.01(t) hereof, pertaining to the leasing of Units, by the tenant, guest, or employee (and his/her immediate family) of any Owner. Each Unit shall be used for residential purposes only (as defined in the zoning ordinances of the City) and shall not be used for commercial or other purposes; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in its residence in accordance with applicable ordinances of the City.

(b) Each Owner shall have the exclusive right, at its sole cost and expense, to paint, repaint, tile, wax, paper or otherwise finish, refinish and decorate the inner surfaces of the walls, ceilings, and floors which comprise the boundaries of its own Unit and the surfaces of bearing walls and partitions within the Unit, and to clean the interior surfaces of windows and doors bounding its Unit. The approval of the Board of Directors shall not be necessary for the activities set forth in the preceding sentence; however, if any floor coverings other than carpeting are installed in any Unit, each Owner shall install sound attenuation materials that must be approved by the Board prior to installation. Each Owner shall maintain its Unit in a clean, safe, sanitary and attractive condition. Each Owner shall also be responsible for the (i) maintenance, repair or replacement of all plumbing lines, plumbing fixtures, electrical wiring, lighting fixtures, heating and air-conditioning equipment, and water heaters located within the Unit, and (ii) as all utility lines located within the Unit. For any repair, maintenance or improvement services

identified in this Section 4.01(b), the Owner shall coordinate the same with the Board or its designee prior to commencement.

(c) Each Unit shall be maintained in accordance with the rules and regulations that may be adopted by the Board of Directors of the Association from time to time.

(d) There shall be no obstruction of the Common Areas, nor shall anything be stored in the Common Areas (except designated storage areas) without the prior written consent of the Board.

(e) Nothing shall be altered or constructed in or removed from the Common Areas, except by the Declarant or the Association, or with the written consent of the Board.

(f) Nothing shall be done or kept in any Unit or in the Common Areas or Limited Common Areas that will increase the applicable rates of insurance without the prior written consent of the Board. No Owner shall permit anything to be done or kept in its Unit or in the Common Areas which will result in the cancellation of any insurance or which would be in violation of any law, and no waste shall be committed in the Common Areas.

(g) No reflective materials, advertising, art work, signs of any kind, or materials of any kind shall be installed, placed or hung on the exterior (or visible through the windows) of any Unit or the Common Areas and no clothing or other personal effects shall be placed upon or hung in view of the exterior portion of any Unit or the Common Areas, without the prior written consent of the Board. No window air conditioning unit shall be permitted. Except as otherwise provided with respect to the Special Declarant Rights, no real estate signs advertising Units for the sale or rental shall be displayed on or about the Condominium or any Unit; provided, however that an Owner may have one (1) standard real estate "for sale" sign not exceeding 2 feet by 3 feet in size and located in the window nearest one entry door to the Unit.

(h) No animals, reptiles, birds, rabbits, livestock, fowl or poultry of any kind shall be kept, raised or bred in any portion of the property, except that a maximum of two cats, or two dogs, or one cat and one dog, with a combined maximum weight of 50 pounds may be kept as a pet, subject to the rules and regulations of the Board and applicable local ordinances. Fish maintained in a household aquarium shall not be deemed to be "animals" as defined herein. No exotic pets shall be allowed in the Condominium. The term "exotic" shall include snakes, cats other than domestic cats, and any animal that may be designated as an exotic pet by the local animal humane society or other similar authority. Any pet creating a nuisance or unreasonable disturbance, noise or odor (in the sole judgment of the Board) shall be permanently removed from the property upon written notice from the Board. All pet owners shall be responsible for complying with all regulations relating to pets established by the Board, including but not limited to requirements to limit waste deposited by such pet(s) in designated areas and to remove any and all waste deposited by such pet anywhere in the Condominium, and related fines or charges imposed for violations of such requirements.

(i) No gardening or farming of any kind shall be carried on within any Unit or any Limited Common Areas, unless plants shall be kept in appropriate containers using a water drainage system that precludes any leakage onto the floors of the Unit.

(j) No noxious, offensive or illegal activity of any kind shall be carried on in any Unit or in the Common Areas, nor shall anything be done therein which may be or become an annoyance or nuisance to the other Owners. No Owner, guest, tenant or any other Person shall have loud parties or play stereo equipment or musical instruments in a loud manner or otherwise permit or make loud noises audible outside its Unit.

(k) No drilling operations of any kind shall be permitted upon or within any Unit or the Common Areas, or in the concrete floors or ceilings, without the prior written consent of the Board.

(l) Each Owner shall be obligated to pay any and all charges and assessments for electricity, gas, other utilities, and taxes levied against its Unit. Any utility charges to the Association shall be assessed against all Owners in accordance with Article VII below. No Owner shall be exempt from liability for applicable specific assessments or charges that the Board may levy pursuant to this Declaration.

(m) No Owner shall deposit any garbage, refuse, or rubbish on or about the Common Areas except in the designated garbage can areas enclosed by a wood fence and located in the parking areas or other appropriate containers suitably placed, as set forth in the rules and regulations of the Association or designated by the Board, so as not to detract from the physical appearance of the Common Areas or the Condominium. No Owner, guest or tenant shall permit any noxious, offensive or unusual smells or odors of any kind to emanate beyond the boundaries of its Unit.

(n) Each Owner shall be liable to the Association for any damage to the Common Areas or any improvements, landscaping or equipment thereon which may be sustained by reason of the negligence or misconduct of said Owner, or its family, guests, invitees, tenants, domestic employees or animals; and the Board shall assess said Owner for the costs of any necessary repairs or replacements, together with costs and attorneys' fees, such assessment to be due and payable immediately or on a date established by the Board by written assessment notice.

(o) If any portion of the Common Areas encroaches upon a Unit, a valid easement for the encroachment and for the maintenance of such Common Areas shall and does exist, so long as the encroachment continues. In the event any part of the Condominium is partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments of parts of the Common Areas due to construction shall be permitted and that valid easements for said encroachment and the maintenance of such Common Areas shall exist. The Common Areas are and shall always remain subject to easements for minor encroachments by Owners for repairs and construction relating exclusively to their respective Units.

(p) In decorating a Unit, each Owner is solely responsible for compliance with the fire protection laws and the building and safety codes of the City and shall indemnify the other Owners and Association for any violation thereof which causes loss or damage to Persons or property.

(q) No heavy trucks, construction equipment, commercial vehicles, boats, house trailers, campers, motor homes, inoperable vehicles, boat trailers, or trailers of any other type shall be permitted to be parked or stored on or within the Condominium, without the prior written approval of the Board, which may establish reasonable further restrictions, rules and/or regulations in its discretion. This prohibition shall not apply to the temporary parking of trucks and commercial vehicles, during periods of approved construction or for pick-up, delivery and other commercial services. The Declarant's exercise of the Special Declarant Rights described herein shall be an approved use of the above in all events.

(r) No baby carriages, playpens, bicycles, wagons, toys, vehicles, charcoal burners or other outdoor cooking devices, nor any other items shall be parked or stored on any part of the Common Areas or Limited Common Areas, in a manner so as to be exposed to public view from the exterior of any Unit, without the prior written consent of the Board. Such items may, however, be kept in a storage area designated for that purpose.

(s) After reasonable notice to the Owners, the Board may establish additional rules and regulations governing and further restricting the use of the Units and Common Areas in any manner not inconsistent with the provisions of this Declaration. The Board, or any Owner, shall have the right to enforce such rules and regulations by any proceeding at law or in equity.

(t) Any leasing of a Unit shall be subject to the following restrictions:

(i) Each lease shall be in writing and shall be for a minimum of six (6) months;

(ii) The lease shall mandate compliance with this Declaration, the Bylaws and all other documentation associated with the Condominium;

(iii) The names of all people who will occupy the Unit shall be given to the Declarant and/or the Association, as applicable, within five (5) days of moving into the Unit; and

(iv) A copy of the executed lease shall be furnished to the Declarant and/or the Association prior to the commencement of tenant's occupancy of the Unit.

(u) All fixtures, equipment and appliances will be used for the purposes for which they were designed. Misuse or abuse of appliances or fixtures within a Unit that affects other Units or the Common Areas is prohibited and any damaging resulting from such misuse or abuse shall be paid by the Owner, and shall be a personal obligation of the

Owner, or occupant if the Unit is not occupied by the Owner. Owners shall not use any electrical device creating electrical overloading of standard circuits. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(v) Floor load within a Unit shall not exceed forty (40) pounds per square foot unless prior written is obtained from the Association. Such written approval shall not be given unless and until an engineering determination of floor load capacity in the area of heavy use is also reviewed and approved by the Association.

Section 4.2 Alterations/Improvements to Units. The following requirements, restrictions and limitations shall apply to the installation of improvements and equipment by Owners on or about their Units:

(a) No vestibule projections, decks, balconies, awnings, spouts, chimney, trellises, grills, poles or flagpoles, porches, bay, bow or oriel windows or doors or similar projections or ornaments shall be connected to or installed or maintained upon any Unit, and no windows, doors, openings or apertures of any kind may be installed, repaired, replaced or maintained in the exterior shell of the Building, without the prior written consent of the Board. With respect to the installation of awnings, sunshades, and other minor additions to any Unit, the prior written approval of the Board shall be necessary and shall be exercised with a view toward promoting uniformity and thereby enhancing the attractiveness of the Condominium as a whole.

(b) No antennas, communications equipment, satellite dishes, weather vanes, electrical, telephone or television cables or other wires or lines, and no solar collectors or recreational or exercise equipment which extends beyond the exterior shell of the Building shall be placed, connected, erected or maintained upon any Unit or Common Areas (including any deck or patio), without the prior written consent of the Board except to the extent the Association or this Declaration cannot restrict an antennae or satellite dish pursuant to the express terms of the Telecommunications Act of 1996.

(c) No heating or air-conditioning equipment of any kind and no solar collectors shall be erected or maintained upon any of the Units or Common Areas, without the prior written consent of the Board. No window air conditioning units shall be permitted.

(d) No Owner shall make any alterations, additions or modifications to any part of the Common Areas, or decorate the exterior portion of any Unit or Common Area, without the prior written approval of the Board except as may be specifically permitted in the rules and regulations of the Condominium, from time to time.

(e) After acquiring all or pertinent parts of an adjoining Unit (subject to satisfaction of the requirements herein), an Owner may remove or alter any previously shared wall or create interior doors, windows or other apertures therein, even if the shared wall is wholly or partially a Limited Common Area or Common Area; provided that such alterations are made in accordance with all applicable provisions of the Act and do not

impair the structural integrity or mechanical or electrical or other systems of the Condominium or Property, and provided all such alterations are approved by the Board of the Association according to the procedures required in Section 4.02(f) of this Declaration. The removal of walls, creation of apertures, and alteration of sound insulation between Units or weather stripping of Units under this subsection shall not be permitted under any circumstances for boundary or demising walls that are also exterior walls or which remain as exterior Unit boundaries.

(f) Subject to the terms of this Declaration, including, but not limited to, Section 4.01(b) hereof, and the rules and regulations of the Association, Owners may make any non-structural, interior improvements or alterations to their Units they may desire. All other improvements or structural alterations, including combining of Units, must receive the Board's prior approval as set forth in this Section 4.02(g). The Board of Directors shall first review and approve detailed architectural plans and specifications or work orders and contracts for proposed improvements and/or structural alterations to the Unit. All such proposed improvements or alterations shall fully comply with applicable City codes, including those for fire, safety, plumbing, electrical, and heating ventilation and air-conditioning systems, and must be prepared, approved and certified by a licensed professional engineer qualified in structural engineering standards. The Board of Directors reserves the right to set and enforce standards which exceed applicable City codes in its sole and absolute discretion; provided that the Board approval shall in no way be deemed to imply compliance with or waiver of any applicable City code requirement.

(g) No Owner shall do any act or any work that will impair the structural soundness and integrity of the mechanical, electric or other systems, or the support of any portion of the Buildings or Common Areas or impair any easement or hereditament. No Owner shall in any way alter, modify, add to or otherwise perform any work whatever upon any of the Common Areas or Limited Common Areas without the prior written consent of the Board. Any such alteration or modification shall be in harmony with the external design and location of the surrounding structures and topography, and shall not be considered until submission to the Board of Directors of the Association of complete plans and specifications showing the nature, kind, shape, size, materials, color and location for all proposed work.

(h) Notwithstanding any other provisions in this Declaration, the Declarant and its agents and employees shall have the express right and privilege during the period of original sale of the Units in the Condominium: (1) to complete the development, improvement and sale of the Units, together with the improvement and interior decorating of the lobbies and any unsold or model Units; (2) to maintain and operate model Units for sales and administrative purposes; (3) to maintain a banner sign on the exterior of the Building or Buildings with general advertising for a period of up to five (5) years after closing of the first original sale of a Unit from Declarant; and (4) to show the Condominium, any unsold Units or available floor space which are offered for sale, including the right to use such Common Areas and facilities as the Declarant deems appropriate, convenient or incidental to the sale of Units, in its sole discretion, including, but without limitation, the exclusive right to use any portion of the Condominium as a business office, the right to display "For Sale" or "For Rent" and other appropriate signs

in aid of the sale or rental of all Units, and the right to maintain and operate a fully staffed customer service, sales and leasing office complex in such other portions of the Condominium, including the Common Areas as may be necessary or convenient under the circumstances. The foregoing rights shall continue and remain effective until the completion of all original sales of all the Units within the Condominium to Owners other than the Declarant.

(i) Notwithstanding the provisions of any State law or City ordinances to the contrary, the Declarant shall have and may freely exercise each of the foregoing rights and privileges described in Section 4.02(h) above without notice to or consent of any kind from the other Owners; and each and every Owner and its heirs, successors and assigns shall be conclusively presumed to have waived any and all rights afforded under State law or City ordinances for notice or consent to any lot split, minor subdivision, plat amendment, variance, or other right or privilege described herein, by virtue of its ownership or acquisition of a Unit, whether by sale or by operation of law.

Section 4.3 Parking and Vehicular Restrictions No Owner shall park, store or keep within or on any Parking Space within the Condominium any truck or commercial type vehicle, any recreational vehicle (including, but not limited to, any camper unit, house/car, motor/mobile home, boat or other water crafts, or snow mobiles), any bus, trailer, trailer coach, camper trailer, boat, or any inoperable vehicle. The above excludes pick-ups, camper trucks, vans, and similar vehicles which do not exceed one (1) ton in weight when used for everyday transportation by the Owner of a Unit or the Owner's tenant.

(a) There shall be no parking anywhere on the Property, except within designated Parking Spaces. No Owner shall park, store, or keep anywhere within the Condominium any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board.

(b) No Owner shall maintain, repair, rebuild, dismantle, paint, wash, service or restore any motor vehicle, boat, trailer, aircraft or other vehicle anywhere within the Project, including within any Parking Spaces. This restriction shall not be deemed to prohibit polishing of vehicles. No vehicle may be parked or stored in any Parking Space that does not fit within the boundaries of such stall. No vehicles may be operated within the Condominium which are unreasonably noisy or which emit an unreasonable amount of smoke or other emissions. No off-road unlicensed motor vehicles may be operated within the Condominium.

(c) In addition to the foregoing restrictions, parking of any and all automobiles, motorcycles or similar vehicles and of any bicycles in the Parking Spaces shall be subject to such reasonable, non-discriminatory rules and regulations as the Association may promulgate. Further, the Association shall have the right to regulate and establish reasonable, nondiscriminatory rules and regulations relating to the use and operation of the portions of the Common Areas and Limited Common Areas.

(d) All Parking Spaces are hereby assigned to the Declarant. During the Declarant Control Period, Declarant may unilaterally and in its sole discretion assign the

Parking Spaces to specific Units or to the Association upon recording of a writing so indicating such assignment(s) with the office of the Register of Deeds of Johnson County, Kansas. In the event that no such assignment is made in writing, the Parking Spaces shall be deemed hereby to be assigned to the Association upon expiration of the Declarant Control Period.

Section 4.4 Enforcement of Restrictions.

(a) In the event that the Association determines that an Owner is not maintaining its Unit or the assigned or appurtenant Limited Common Areas, in accordance with the applicable standards, or continues to violate any of the restrictions on use or improvements contained in Section 4.01, Section 4.02 or Section 4.03 above and as may be otherwise established by the Board from time to time, so that (in the discretion of the Association) the physical or aesthetic qualities of the Condominium or the peace and quiet enjoyment of other Owners are detrimentally affected, and the Owner of such Unit fails to properly remedy any such condition within thirty (30) days after notice in writing, then in such event the Board shall have the right: (1) to assess fines and costs, including, but not limited to, costs of enforcement which may include attorney's fees, as Special Unit Expenses upon the offending Owner (as described in Article VII below) in such amounts as the Board deems necessary to effect compliance with the requirements, or (2) to enter said Unit or Limited Common Area and perform such repairs, maintenance or alterations as it deems necessary or appropriate and levy the costs and expenses of such actions as Special Unit Expenses upon the Owner of such Unit. So long as the Association, its agents, servants or employees exercise reasonable care in the performance of said repairs, maintenance or alterations, they shall not be liable to the offending Owner for any damages caused in so doing. The cost of such work shall be collected in the same manner as other assessments. In addition, the Board or its representatives, together with emergency personnel, shall have an immediate right of access to all Units in the Owners' absence under emergency conditions. Furthermore, the Association shall be entitled to tow or cause to be towed, and/or may impound or cause to be impounded, any automobile or other vehicle that is operated, parked or stored in violation of the restrictions set forth in Section 4.03 of this Declaration or any applicable rule or regulation. The costs and expenses incurred in connection with any such activity shall be assessed against and collected from the applicable Owner in the same manner as other assessments.

(b) To secure payment of any fine assessed or cost and expense incurred by the Board, the Association shall have authority to create a lien, as described in Article VII herein, ultimately enforceable by foreclosure of the Unit. The violation of any restriction or regulation adopted by the Association, or the breach of any covenant or provisions herein contained, shall give the Association the right in addition to all other rights set forth herein:

(i) If thirty (30) days after notice in writing, the violation or breach has not been remedied, the Association shall have the right to enter upon the portion of the Condominium upon which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting

Owner, any structure, thing or condition which may exist thereon, contrary to the intent and meaning of the provisions hereof, and the Declarant, the Association, or their successors, assigns or agents shall not thereby be deemed guilty in any manner of trespass; or

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

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

(c) In addition, if any Owner (either by its own conduct or by the conduct of any other occupant, including Tenant, guest, or employee of its Unit), shall violate any of the covenants, restrictions or provisions of this Declaration or the rules and regulations adopted by the Association, and such violation shall continue for thirty (30) days after notice in writing from the Association, or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violation, then the Association shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Owner to continue as an Owner and to continue to occupy, use or control its Unit, and thereupon an action in equity may be filed by the Association against the defaulting Owner for a decree of mandatory injunction against the Owner or the Unit's occupant, or in the alternative, a decree declaring the termination of the defaulting Owner's rights to occupy, use or control the Unit owned by him or her on account of the breach of covenant, and ordering that all the rights, title and interests of the Owner in the Unit shall be sold (subject to the lien of any existing Mortgage) at a judicial sale upon such notice and terms as the court shall establish, except the court shall enjoin and restrain the defaulting Owner from reacquiring its interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, reasonable attorneys' fees and all other expenses of the proceeding, and all such expenses shall be assessed against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder and any liens or Mortgages, may be paid to the Owner. Upon the confirmation of such sale, the purchaser shall be entitled to a deed and immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Unit subject to this Declaration and that the purchaser shall immediately be a Member of the Association in the place and stead of the defaulting Owner.

ARTICLE V. MANAGEMENT AND ADMINISTRATION

Section 5.1 Management. Subject to the provisions of applicable law, the management and administration of the Condominium shall be governed and performed by the Association, acting in accordance with this Declaration, the Articles and the Bylaws. The Association shall designate a registered agent with the office of the Secretary of State of Kansas

who shall be responsible to accept service of process on behalf of the Association. The initial registered agent shall be _____, whose address is _____, Kansas, _____. The Bylaws shall provide, among other things, for voting on all matters by proxy, annual election of directors by the Owners and the requirements for a quorum. All persons present at a meeting at the time a matter is voted upon, and all persons voting by proxy, shall be deemed present for purposes of all quorum requirements set forth in this Declaration and the Bylaws. Every person or entity that acquires any interest in any portion of the Condominium shall be deemed to have consented and agreed to, and shall be bound by, all provisions of the Articles and the Bylaws. In the event of any conflict between the provisions of this Declaration and the provisions of the Articles or the Bylaws, then, subject to applicable law, the provisions of this Declaration shall supersede and be controlling over the conflicting provisions of the Articles or the Bylaws.

Section 5.2 Declarant Control. For the benefit and protection of the Owners and any Mortgagees, the Declarant shall have the sole power to appoint and remove all members of the Board during the Declarant Control Period. Within 30 days after the end of the Declarant Control Period, the Owners shall elect a Board consisting of not less than three (3) members, which shall be Owners.

Section 5.3 Manager. The Association may employ a Manager, who shall have and possess all of the rights, powers, authority, functions and duties as may be specified in the contract of employment or as may be delegated by the Association to him. The Association may pay the Manager such compensation as it may deem reasonable for the services to be rendered, which compensation shall constitute a part of the Common Expenses.

Section 5.4 Powers and Authority of the Board. In addition to those powers granted in the Articles and the Bylaws, which govern the administration of the Condominium in further detail, the Board shall have and may freely exercise the following powers and authority:

(a) To conduct, manage and control the affairs of the Association and to make and enforce rules and regulations not inconsistent with this Declaration or with the Act and which it deems to be in the best interests of the Owners.

(b) To determine the frequency, date, time and location of any Board meetings, provided that the Board shall meet not less frequently than once a year.

(c) To appoint an agent or property management company as manager of the Condominium and Common Areas, and to delegate such of its powers to such agent or manager as may be required for proper maintenance and operation of the Condominium and Common Areas.

(d) To make contracts and incur liabilities and to pay, out of the assessments against Owners, the following items (among others):

(i) Service charges for water, sewer, garbage, electrical, telephone, gas, heating, air-conditioning, security, cable television, closed-circuit television, and other desirable or necessary utility services for the Common Areas and (if not separately metered or charged) for the individual Units.

(ii) Premiums for workers' compensation insurance to the extent necessary to comply with any applicable laws or as is otherwise desirable.

(iii) Compensation for the Manager and for all employees of the Association, including medical and hospitalization insurance, pension plans and such other compensation as the Board shall deem appropriate.

(iv) Legal, accounting and consultant fees for services necessary or proper in the operation of the Association or enforcement of the restrictions and covenants herein contained and other rules and regulations adopted by the Board.

(v) Charges for regular and preventive maintenance, painting, gardening, landscaping, pest control, janitorial and security services, elevator maintenance and inspection, and repair of the Common Areas, and for such equipment, and furniture for the Common Areas as the Board shall determine is appropriate or desirable, and the Board shall have the exclusive right and duty to purchase and maintain the same.

(vi) The costs of any other materials, supplies, furniture, labor, services, maintenance, repairs or structural alterations, which the Board is required to secure or pay for pursuant to the terms of this Declaration, the Articles or the Bylaws, or which in its opinion shall be necessary or desirable for the Common Areas or the enforcement of this Declaration, the Bylaws or rules and regulations.

(vii) Any amount necessary to discharge a lien or encumbrance levied against the Condominium or any part thereof which may, in the opinion of the Board, constitute a lien against the Common Areas, rather than merely against the interests of a particular Owner or Owners, except that where one or more Owners are responsible for the existence of any lien, they shall be jointly and severally liable for the cost of discharging such lien.

(viii) Expenses for maintenance and repair of any Unit if such maintenance and repair is necessary, in the opinion of the Board, to protect and preserve the Common Areas, and the Owner or Owners of said Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity for such maintenance or repair is delivered personally or by certified mail to said Owner or Owners pursuant to Section 4.04, Enforcement of Restrictions. The Board, its agents and employees are hereby given the right and license to enter upon any Unit and levy a special assessment against the Owner or Owners of any such Unit to pay for the costs or expenses incident to said maintenance, repair, and assessment pursuant to Article VII.

(ix) Taxes and special assessments which are or would become a lien on the Common Areas.

(x) Expenses for maintenance and repair of nonexclusive easements for drainage purposes, including all drainage structures and appurtenances

constructed thereon, which nonexclusive easements shall be appurtenant to and for the benefit of the Condominium.

(xi) Expenses of employing, equipping and providing uniforms for security guards, doormen, parking attendants, switchboard operators, maintenance engineers, cleaning personnel and similar required expenses.

(xii) Expenses for providing and maintaining recreational facilities, the play ground and the play area.

(xiii) Expenses for providing and maintaining the pool and pool deck.

(e) To authorize and contract for capital additions and improvements to the Common Areas which shall be charged to the Owners in accordance with their respective percentages of Common Area Interests. However, no such capital additions or improvements estimated to cost in excess of twenty-five percent (25%) of the budgeted gross expenses of the Association for the previous fiscal year shall be authorized in any one year without the vote or written consent of at least sixty-seven percent (67%) of the membership. The Declarant shall not be deemed to be an Owner for purposes of voting for such capital improvements to the Common Areas.

(f) To establish and maintain a contingency reserve account, to assure the availability of funds for unanticipated or extraordinary Common Expenses.

(g) To adopt and amend budgets for revenues, expenditures, and reserves and collect assessments from the Owners.

(h) Subject to the provisions of Section 16.05 hereof, to institute, defend, or intervene in litigation or administrative proceedings, in its own name or on behalf of two (2) or more Owners, on matters affecting the Condominium.

(i) To regulate the use, maintenance, repair, replacement, and modification of Common Areas and Limited Common Areas and to regulate the use and improvement of Units as they affect the Common Areas.

(j) To maintain, repair, remodel, reconstruct and make improvements to the Limited Common Areas, the costs of which shall be assessed to the Owners to whom such Limited Common Areas are assigned or appurtenant.

(k) To acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided, that Common Areas may be conveyed or subjected to a security interest only pursuant to the Act.

(l) To grant easements, leases, licenses, and concessions through or over the Common Areas.

(m) To make reasonable accommodations in the rules, regulations and declarations adopted by the Association or any other restrictions applicable to the



Condominium if such accommodations are required by law to afford a disabled person equal opportunity to use and enjoy the Condominium.

(n) To impose and receive any payments, fees, or charges for the use, rental, or operation of the Common Areas, other than Limited Common Areas, and for services provided to Owners.

(o) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, or rules and regulations of the Association.

(p) The Board shall have the right, power and privilege to suspend the voting rights of an Owner or Owners for the period during which an assessment against its Unit remains unpaid and delinquent. The Board shall also have the right to suspend the voting rights of every Owner of a Unit for a period not to exceed thirty (30) days for any one (1) violation of this Declaration or infraction of the rules and regulations of the Association committed by such Owners, their respective guests, servants, family members, tenants or invitees; provided that any suspension of voting rights (except for failure to pay assessments) shall be made only after written notice and the opportunity for a hearing are provided in accordance with the Bylaws. Further, no such suspension shall apply to any vote for which the Act specifies a minimum percentage necessary to establish a quorum or take a specific action where the presence or vote of any such suspended Member is required to meet said minimum percentage.

(q) To impose reasonable charges for the preparation and recording of amendments to the Declaration, resale certifications, or statements of unpaid assessments.

(r) To provide for the indemnification of its officers and Board members and to maintain directors and officers' liability insurance.

(s) To assign its rights to future income, including the right to receive Common Expense assessments, but only to the extent expressly provided in the Declaration.

(t) To adopt and amend the Bylaws and rules and regulations governing the use of the Common Areas and the improvements and facilities located thereon.

(u) To exercise any other powers conferred by the Declaration, in the Articles or Bylaws, or necessary and proper for the administration of the Association.

(v) To contract with other parties for use by Owners of recreational facilities.

Section 5.5 Insurance Matters. The Association shall obtain and maintain at all times property insurance on the Units and the Common Areas, including the Buildings and fixtures, insuring against such risks and in such amounts as reasonably required by any Mortgagee, or as hereafter customarily covered with respect to such property similar in construction, design, location, and use to that of the Condominium, and such other risks, including but not limited to the risk of floods, as the Board in its discretion shall deem

appropriate and consistent with responsible business practice to the extent available at commercially reasonable rates. All policies of such insurance shall be issued by responsible insurance companies authorized to do business in the State. The insurance may be in blanket policy form and shall be issued in the name of the Association for the benefit of the Owners and all mortgagees, as their interests may appear. The policy shall be in an amount not less than the full replacement value of the insured property, exclusive of land, foundation, excavation and other terms normally excluded from property coverage. The loss payable clause shall be in favor of the Association as trustee for each Owner and his Mortgagee and Mortgagees, if any. Such insurance policy shall also provide that it cannot be canceled by either the insured or the insurance company until after thirty (30) days' prior written notice (or the maximum number of days of notice less than thirty (30) which is reasonably possible to obtain) to the Association and to each Mortgagee. The Board, upon request of any Owner or Mortgagee, shall request the insurer to furnish a certified copy of each policy and a separate certificate identifying the interest of the Owner or Mortgagee.

(a) Not later than the time of the first conveyance of a Unit to a Person other than the Declarant, the Association shall obtain and maintain at all times a comprehensive policy or policies of public liability insurance, including medical payments insurance, covering the Common Areas. Such policy or policies shall be in a base amount deemed sufficient by the Association or in such amounts as reasonably required by any Mortgage, plus such other insurance, and including such coverage, as the Board in its discretion shall deem appropriate and consistent with responsible business practice to the extent available at commercially reasonable rates. Such policies must provide that they may not be canceled or substantially modified by any party, without at least thirty (30) days written notice (or the maximum number of days of notice less than thirty (30) which is reasonably possible to obtain) to the Association and all Mortgagees.

(b) Not later than the first conveyance of a Unit to a person other than the Declarant, the Association may, upon majority approval of the Board, obtain and maintain a policy or policies of (i) liability insurance insuring the Board, Officers, employees and agents of the Association against any claims, losses, liabilities, damages or causes of action arising out of, in connection with, or resulting from any act done or omission to act by any such Person, (ii) workmen's compensation as required under the laws of the State of Kansas, (iii) fidelity insurance in an amount at least three times the total monthly assessment due to the Association, and (iii) such other insurance as the Board in its discretion shall deem appropriate and consistent with responsible business practice.

(c) The Association shall not be responsible for the liability of any Owner not caused by or connected with the Association's operation or maintenance of the Common Areas, or activities authorized under this Declaration, or the Bylaws and rules and regulations. Each Owner may obtain, in such Owner's discretion additional insurance at his or her own expense for his or her own benefit for items not covered by insurance obtained by the Association, including without limitation personal property or contents insurance. Insurance coverage on exterior Unit doors (including storm doors), and windows, together with insurance on any upgrades made by an Owner to its Unit, and casualty and public liability insurance coverage within each Unit are specifically made

the responsibility of each Owner, and each Owner must furnish a copy of his or her insurance policies to the Association on an annual basis at renewal. All Owners must carry liability coverage, including full replacement value for damage to Common Areas or other Units, and shall name the Association as an additionally named insured. Notwithstanding the foregoing, all insurance policies maintained by the Association shall provide that the failure of an Owner to obtain insurance shall not result in a denial of or decrease in recovery under the Association's policies.

(d) All insurance policies required by this Article V shall also comply with any provisions of the Bylaws regarding insurance and with the requirements of the Act. Without limiting the generality of the foregoing, all insurance policies on the Common Areas shall provide that:

(i) Each Owner is an insured person under the policy with respect to liability arising out of his interest in the Common Areas or membership in the Association;

(ii) The insurer waives its rights to subrogation under the policy against any Owner or members of his household;

(iii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy or reduce the amount of recovery under the policy; and

(iv) If, at the time of a loss under the Policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 5.6 Responsibility for Common Areas. The Board shall have the responsibility to manage and maintain all the Common Areas, Limited Common Areas not otherwise maintained by the Owners, and all property that may be acquired by the Association, in a first-class condition and in a good state of repair. The Board may grant easements over the Common Areas where necessary to provide utilities and sewer facilities to serve the Condominium or adjacent properties.

Section 5.7 Limitation on Liability. Neither the Association nor the Declarant nor Manager, nor any officer or member of the Board nor any committee of the Association, nor the Declarant or Manager shall be liable to any Owner or to any other party, including the Association, for damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such party; provided that such Person or party has acted in good faith on the basis of such information as may be available, and without willful or intentional misconduct.

Section 5.8 Restrictions Upon the Board.

(a) Under no circumstances may the Association cause a forfeiture of an Owner's right to use and enjoy its Unit for failure of said Owner to comply with the

provisions of this Declaration, the Bylaws, or the rules and regulations adopted by the Association, except: (1) by judgment of a court of competent jurisdiction or a decision arising out of previously agreed upon arbitration in accordance with applicable Kansas law; or (2) on account of a foreclosure or a sale under a power of sale for failure of the Owner to pay assessments duly levied by the Association or to abide by the terms of this Declaration, the Bylaws or rules and regulations as set forth herein; or (3) the suspension of voting rights pursuant to Section 5.04(p) above; or (4) the imposition of late charges and other fees and assessments.

(b) The Board is prohibited from taking any of the following actions, except with the vote or written consent of at least sixty-seven percent (67%) of the membership of the Association (excluding the Declarant):

(i) Entering into any contract for goods or services for a term longer than one (1) year with the following specific exceptions:

(i) A property management agreement for a term of longer than three (3) years.

(ii) A contract with a public utility company if the rates charged for the materials or services are regulated by the State Public Service Commission or under franchise with the City, or other governmental authority; provided, however, that the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate.

(iii) Prepaid comprehensive casualty, liability and other insurance policies not to exceed three (3) years in duration; provided that such policies shall permit cancellation or modification by the insured.

(ii) Incurring aggregate expenditures for capital improvements to the Common Areas in any fiscal year in excess of twenty-five percent (25%) of the budgeted gross expenses of the Association for the previous fiscal year.

(iii) Selling property of the Association having an aggregate fair market value greater than ten percent (10%) of the budgeted gross expenses of the Association for the previous fiscal year.

(iv) Paying compensation to members of the Board or to officers of the Association for services performed in the conduct of the Association's business; provided, however, that the Board may reimburse a Board member or officer for expenses actually incurred in carrying out the business of the Association.

Section 5.9 Employees. Subject to the limitations in Sections 5.07 and 5.08 above, the Board shall have the authority to employ and pay for the following personnel:

(a) A Manager, including on-site administrative personnel.

- (b) Such security guards as are necessary to serve the needs of the Members.
- (c) Cleaning personnel as needed (to clean the Common Areas and facilities).
- (d) Landscaping, lawn and gardening personnel as required (to maintain and serve the Common Areas).
- (e) Personnel to maintain and service the pool.
- (f) Other personnel and services as deemed necessary by the Board.

**ARTICLE VI.
AUTHORITY OF THE MEMBERS**

In addition to any other powers and authority provided in this Declaration and in the Bylaws, the Members of the Association shall have the following express authority and control over actions by the Board:

(a) To effect necessary amendments to this Declaration in the manner provided in Section 16.14 below.

(b) To subject any action taken by the Board in levying any assessment (other than the general monthly assessments, special assessments, and emergency assessments provided for in Article VII herein), to review by the Members. Such review may be initiated only by a Member filing with the Board, within thirty (30) days of notice of such assessment, a petition requesting such review executed by Owners representing at least twenty-five percent (25%) of the Members of the Association, excluding the Declarant. Upon receipt of such petition, the Board shall forthwith duly call and hold a special meeting of the Members in accordance with the procedures set forth in the Bylaws in order to consider such petition and review the disputed action of the Board. At such meeting, in the event that sixty-seven percent (67%) of the membership other than the Declarant cast affirmative votes for a resolution rescinding the assessment referred to in the petition, the assessment shall be deemed rescinded, and the Board shall take no action to enforce such assessment. If such vote is not obtained, the Board shall proceed to enforce such assessment according to this Declaration and the Bylaws. Following receipt of the petition, the Board shall take no action to enforce the assessment referred to in the petition pending the vote of the Members described herein.

(c) To enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Board or any Owner to enforce any covenant, restriction, rule or regulation shall in no event be deemed a waiver of the right to do so thereafter. Such right may only be waived by an instrument in writing signed by the party charged with such waiver and shall be limited to the particular covenant, restriction, rule or regulation which is expressly described as being waived in such writing.

**ARTICLE VII.
ASSESSMENTS**

Section 7.1 Assessments for Common Expenses. Each Owner shall be jointly and severally liable for the Common Expenses that are levied against such Owner's Unit. Units owned by Owners other than Declarant must be allocated full assessments no later than sixty (60) days after the first Unit is conveyed. Each Unit shall be assessed in accordance with such Unit's percentage of Common Expenses as allocated in this Article VII. Assessments for the estimated Common Expenses ("**Regular Assessments**") shall be due annually, semi-annually, quarterly or monthly, in the discretion of the Board, in advance on or before the first (1st) day of each year, quarter or month or quarter. Any Regular Assessment not paid by the tenth (10th) day after such due date shall accrue interest from said date until paid, at the maximum rate permitted by the Act, as amended. Assessments shall begin on the sale of the first Unit to an Owner other than the Declarant. Liability for Regular Assessments shall be prorated if the ownership of a Unit commences on a day other than the first day of a month. The Association will collect a one time non-refundable initiation fee of \$500 for all buyers, to be paid at closing of the purchase of any Unit.

Section 7.2 Purpose of Assessments.

(a) Regular Assessments shall be used exclusively for the purposes of promoting the health, safety, welfare and recreation of the residents of the Condominium, and in particular of the Condominium and the facilities devoted to said purposes. Such uses may include, but are not limited to, the cost to the Association of the following: all insurance, repair, replacement and maintenance of the Common Areas; fire, extended coverage, vandalism, malicious mischief and liability insurance for the Units; management services; taxes and assessments, general and special (exclusive of real estate taxes assessed against Owners); legal and accounting services as may from time to time be authorized by the Association; construction of facilities relating to the Association's purposes; maintenance of easements upon, constituting a part of, appurtenant to or for the benefit of, the Condominium; mowing grass and maintaining the grounds and landscaping; maintenance of any parking and recreational facilities which are part of the Common Areas; maintaining the roofs and exterior surfaces of any Building; garbage pickup; pest control; road maintenance; outdoor lighting; security service for the Condominium; water and sewer service furnished to the Condominium by or through the Association; discharge of any liens on the Common Areas; recreational areas, play ground area and play area; servicing and maintaining the pool; all other Common Expenses; and all other uses permitted by this Declaration and the Act.

(b) Upon acquisition of record title to a Unit, each purchaser of a Unit shall contribute to the Association a one time non-refundable initiation fee of \$500 (the "Initiation Fee"). This amount shall be paid by the purchaser of such Unit in connection with the closing of the purchase and sale of the Unit and paid therefrom to the Association. The Declarant shall have no obligation to contribute an Initiation Fee. In the event that that the Initiation Fee is less than two (2) months of the then current monthly assessment for such Unit as determined by the Board, the Initiation Fee will be increased to an amount equal to two (2) months of the then current monthly assessment.

The Declarant shall not use the Initiation Fee funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits during the Declarant Control Period. However, when Declarant's unsold Units are sold, Declarant may reimburse itself for funds paid to the Association for an unsold Unit's share of the Regular Assessments by using the Initiation Fee funds collected at closing when the Unit is sold. The purpose of the Initiation Fee fund is to insure that the Board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board for the performance of its obligations. Amounts paid into the fund are not to be considered as advance payment of Regular Assessments.

(c) A portion of the Regular Assessments shall be used for the creation of a working capital fund. This fund will be used for the same purposes as the Regular Assessments, as set forth in Section 7.02(a) herein.

(d) The Association, through the Board, shall establish a reserve or sinking fund to be maintained in a segregated interest-bearing account, in order to accumulate funds for the anticipated cost of maintenance, repair and replacement of capital improvements, including fixtures and personal property relating thereto. The Board may levy assessments for the reserve fund, payable no more frequently than monthly, in the same manner as Regular Assessments. Amounts paid into the reserve or sinking fund are not to be considered as advance payment of Regular Assessments.

Section 7.3 Determination of Assessments. At least once each calendar year, beginning with the calendar year beginning January 1, on the calendar year immediately following expiration of the Declarant Control Period, the Board shall prepare and adopt a budget for that year, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary and advisable by the Board for reserves. After preparation and adoption of each such budget, the Board shall provide each Member with a copy and shall give each Member notice of the assessment made against that Member's Unit based upon such budget and of the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notices; provided, however, that the first budget after creation of the Condominium shall be prepared and adopted by the first Board only for the balance of the then fiscal year of the Association, shall be prepared and adopted as soon as practicable after such creation, and notice of the amount of the assessment against each Unit for such balance of the fiscal year shall be given by the Board or Declarant to each Member as soon as practicable after adoption of such assessment and shall be deemed levied upon notice thereof given by the Board of Directors, and shall be due as provided in Section 9.5 of the Bylaws.

Section 7.4 Allocation, Limits and Changes in Assessments. The assessments for each Unit shall be proportionate to the Common Area Interest for each Unit in the reasonable discretion of the Declarant or the Association. If the Board determines at any time during any fiscal year that a greater Regular Assessment is required to adequately perform the duties and responsibilities of the Association and pay all expenses thereof, then the Board may increase the Regular Assessment up to twenty-four percent (24%) over the prior year without a vote of the Owners. Any increases equal to or exceeding twenty-five percent (25%) must be approved by the

holders of at least sixty-seven percent (67%) of the outstanding votes in the Association at a duly held annual or special meeting. The Board may decrease the amount of any Regular Assessment or any other assessment at any time or times and to any amount the Board deems appropriate and consistent with sound business practices, without the approval of the Owners.

Section 7.5 Special Assessments.

(a) In addition to the assessments authorized in Sections 7.01 and 7.02 hereof, the Association may levy at any time a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of improvements upon the Common Areas, including the necessary fixtures and personal property related thereto, provided, however, that any such Special Assessment which equals or exceeds one hundred twenty-five percent (125%) of the Regular Assessment levied for the Unit must be approved by the voting Members of the Association representing at least sixty-seven percent (67%) of the total votes in the Association, at a special meeting called for such purpose, at which a Quorum is present. In addition, Special Unit Expenses may be assessed to specific Units as Special Assessments upon such specific Unit for insurance and Limited Common Area expenses attributable to that Unit, which may include reasonable attorney's fees for enforcement of the covenants, restrictions and/or assessments permitted herein, upon approval by Majority vote of the Board.

(b) If any taxes are assessed against the Common Areas or the personal property of the Association, rather than against the individual Units, said taxes shall be added to the annual assessments and, if necessary, a special assessment may be levied against the Condominium Unit in an amount equal to said taxes, to be paid in equal installments, the number of installments and date for payment based upon the number of installments permitted by the Johnson County Treasurer, payable thirty (30) days prior to the due date of each tax installment.

Section 7.6 Notice of Assessments. The Board shall give each Owner written notice of the amount of its Regular Assessment and any other assessments payable in monthly installments at least ten (10) days before the first day of the fiscal year in which such assessments are payable. The Board shall give at least thirty (30) days written notice of all other assessments. Failure of the Board to give timely notice of any assessment shall not release any Owner from the obligation to pay the assessment, but shall postpone the date the assessment is due, until the required notice period has elapsed; provided that, if the assessment is payable in monthly installments no due date will be postponed unless such due date occurs before the notice is given or within the ten (10) days following the date such notice was given.

Section 7.7 No Exemption. No Owner may exempt himself from liability for any assessment by failure to use or enjoy any of the Common Areas or by abandonment of his Unit.

Section 7.8 Lien and Personal Debt for Assessments.

(a) All assessments of any kind, including late fees and fines, not paid by an Owner when due, including interest thereon at the lesser rate of (i) the highest amount

allowed by law; or (ii) twenty percent (20%) per annum, shall constitute a lien on such Unit superior and prior to all other liens and encumbrances, except:

(i) Liens and encumbrances recorded before the recordation of this Declaration, including any Mortgage;

(ii) All liens under any Mortgage for the purchase of a Unit recorded prior to the date such assessment becomes delinquent;

(iii) Liens for real estate taxes and other governmental assessments or charges against the Unit; and

(iv) Up to a maximum of six (6) months' assessments or fines, which are due prior to any subsequent refinancing of a Unit or for any subsequent second mortgage interest except for delinquent assessments or fines.

If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the Association.

(b) Such lien shall attach from the date the Assessment becomes due. The lien may be enforced by foreclosure of the defaulting Owner's Unit by the Association in the same manner as a Mortgage on real estate. Each Owner, by accepting a deed to his Unit, expressly grants to the Association a power of sale in connection with the assessment lien. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including, without limitation, all publication, recording, title search and mailing costs, the costs and expenses for filing any necessary notice or claim of lien and all reasonable attorneys' fees and trustee's fees. The Owner shall also be required to pay to the Association a reasonable rental for the Unit during the period of delinquency, and the Association shall have the power to bid for the Unit at the foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event a foreclosure has been commenced but is subsequently stopped because the Owner has paid all amounts due, the Owner will nevertheless pay all of the aforesaid costs and expenses incurred through the time the delinquency is paid.

(c) The amount of each assessment, including interest and late fees, shall also be a personal debt of each respective Owner at the time the assessment becomes due. The Association may maintain an action against each Owner to recover a money judgment for unpaid assessments without foreclosing or waiving the lien securing the same, and the Association shall also be entitled to a judgment for reasonable attorneys fees and court costs.

(d) Any Mortgagee holding a lien on a Unit may pay any unpaid assessments payable with respect to such Unit, and upon such payment such Mortgagee shall have a lien on such Unit for the amount paid of the same priority as the lien of its mortgage.

(e) A lien for an assessment will not be affected by the sale or transfer of the Unit, unless a foreclosure of a first Mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying further assessments.

Section 7.9 Statement of Assessments. Upon the written request of any Owner or Mortgagee of a Unit, the Association, by its Board, shall, within ten (10) days after such request, issue a written statement setting forth the unpaid assessments, if any, with respect to such Unit, the amount of the current monthly assessments, the date of such assessment and the due date, credit for advance payments or for prepaid items, including, but not limited to, insurance premiums and such other items as are required by the Act, which statements shall be conclusive upon the Association in favor of all persons who rely thereon in good faith.

Any purchaser, donee or other transferee of a Unit who, by deed or other writing (herein "Grantee"), expressly assumes personal liability for unpaid assessments against the transferor, shall be jointly and severally liable with the transferor for such assessments. Grantee shall be entitled to a statement from the Board, within ten (10) days after his written request, setting forth the amount of all current assessments and the dates such assessments become due, as well as any credit for advanced payments or for prepaid items, including, but not limited to, insurance premiums. This statement shall be conclusive upon the Association.

ARTICLE VIII. DAMAGE AND DESTRUCTION

Section 8.1 General Provisions.

(a) The provisions of this Article VIII shall govern the repair and rebuilding of the Condominium (including each Unit), if any part thereof is damaged by fire or other casualty, and shall also apply to the collection, holding, application, and disposition of the proceeds of any insurance policy or coverage obtained pursuant to this Declaration, or under which the insurance proceeds are to be paid to or for the account of the Association or under which the Board has control of the disposition of proceeds. Upon written notice from the Board, each Owner shall promptly remove all furnishings and belongings from the Unit, the Limited Common Areas or parts thereof, as may be necessary to effect such repairs and reconstruction.

(b) Any portion of the Condominium for which insurance is required under Article V which is damaged or destroyed shall be repaired or replaced promptly by the Association unless:

(i) The Condominium is terminated;

(ii) Repair or replacement would be illegal under State or local health or safety statute or ordinance, or

(iii) Eighty percent (80%) of the Owners, including every Owner of a Unit or assigned Limited Common Area that will not be rebuilt, vote not to rebuild. If the Owners vote not to rebuild any Unit, that Unit's Common Area

Interests are automatically reallocated upon the vote as if the Unit had been condemned under Article IX hereof, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations.

Section 8.2 Damage to Common Areas. Notwithstanding Section 8.01 above, if all or any part of the Common Areas (including any Limited Common Area) is damaged by fire or other casualty, the following provisions shall govern repair and rebuilding, as well as the collection, holding, application and distribution of the proceeds of any insurance policy payable to or for the account of the Association due to such damage:

(a) If the estimated cost of repairing or rebuilding damaged portions of the Common Areas and/or Limited Common Areas does not exceed the amount of available insurance proceeds, the Board shall deposit such proceeds in an escrow account with a bank or a savings and loan institution or other financial institution, including, without limitation, any loan servicer acting on behalf of such institution (each a "Financial Institution") to be held, used and disbursed to rebuild and repair the damage, as work progresses or upon completion, pursuant to such contract as the Board shall enter into for the repairs. The Board shall thereupon contract to repair or rebuild the damaged portion of the Common Areas and/or Limited Common Areas. If the insurance proceeds are insufficient to pay all the estimated costs of repairing and rebuilding the Common Areas, the Board shall levy a Special Assessment against all Owners to make up any deficiency. Notwithstanding the foregoing, in the event of damage to Limited Common Areas, only those Owners affected by such damage shall be assessed; provided that all Owners shall be assessed for damages to the other Common Areas. In the event the total insurance proceeds actually received exceed the actual cost of rebuilding and repairing damage to the Common Areas, the excess shall be paid and distributed to all the then Owners in proportion to their respective percentages of Common Area Interest and Common Expense Liability. The repair or rebuilding contemplated by this Section 8.02(a) shall restore the Common Areas as closely as possible to the condition existing immediately prior to such damage, and shall be commenced within one hundred twenty (120) days following receipt of any such insurance proceeds by the Board.

(b) As soon as is practicable following damage to the Common Areas on account of fire or other casualty, the Board shall obtain firm bids from three (3) or more reputable contractors to rebuild, repair and restore the damaged portions of the Common Areas or Limited Common Areas as closely as possible to their condition existing immediately prior to such damage. The Board shall select and hire the contractor that (in the judgment of the Board) has submitted the best bid.

(c) In the event the proceeds from insurance are not sufficient to cover the costs of rebuilding the Common Areas, the Board shall levy a special assessment in accordance with the Bylaws and Section 8.02(a) above, in order to raise any additional amounts necessary. The Board shall deposit such funds with a Financial Institution selected by the Board in the manner set forth in Section 8.02(a), along with the insurance proceeds.

Section 8.3 Damage to the Units. Notwithstanding Section 8.01 above, if all or any part of a Unit or Units is damaged by fire or other casualty, the following provisions shall govern repair and rebuilding, as well as the collection, holding, application and distribution of any insurance proceeds payable to or for the account of the Association due to such damage:

(a) Each of the affected Owners shall be responsible for commencing repairs and reconstruction of their respective Units within one hundred twenty (120) days after the casualty and diligently pursuing such work to completion. The Board shall deposit all insurance proceeds applicable to a damaged Unit or Units into an escrow account or accounts with a Financial Institution for the benefit of the Owner or Owners of the damaged Units, to be held, used and disbursed to rebuild and repair the damage, as work progresses or upon completion, pursuant to contracts for such repairs negotiated and entered into by the affected Owners. In the event the actual costs of repairing and restoring the damaged Units should exceed the previously estimated cost, then the affected Owners shall pay the difference.

(b) Where provision is made in this Declaration for payment and distribution of all or any part of any insurance proceeds to all current Owners, payments to each of said Owners shall be based upon the ratio of the fair market value of each Unit to the fair market value of all Units in the Condominium. Fair market value shall be determined by a real estate appraiser selected by the Board.

Section 8.4 Disposition of Property. If, within one hundred twenty (120) days of the date of the damage or destruction to all or part of the Property, it is not determined by the Association to repair, reconstruct or rebuild, then and in that event: (i) the Property shall be deemed to be owned in common by the Owners; (ii) the undivided interest in the Property owned in common which shall appertain to each Owner shall be the percentage of undivided interest previously owned by such Owner in the Common Areas; (iii) any liens affecting any of the Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property as provided herein; and (iv) the Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Owner.

ARTICLE IX. CONDEMNATION

This Article shall govern in the event all or a portion of the Condominium (including Units and/or Common Areas, including Limited Common Areas) is taken by any public authority pursuant to the power of eminent domain. Upon receiving formal notice from such public authority that it intends to take all or a portion of the Condominium, the Board shall, within sixty (60) days thereafter, call and hold a special meeting of the Members of the Association. A vote of the Members shall be held to determine whether to sell and partition the Condominium pursuant to Article XIII below.

Section 9.1 Waiver of Partition. In the event twenty-five percent (25%) or more of the Units and Common Areas are taken by condemnation, and at least sixty-seven percent (67%) of the membership votes to waive the prohibition against partition contained in Article XIII below, the prohibition shall be deemed waived, and the Board, upon executing, acknowledging and recording a certificate evidencing the partition, shall sell the Condominium for the benefit of all the affected Owners and distribute the proceeds thereof in accordance with Article XIII.

Section 9.2 Distribution of Proceeds. However, in the event that less than twenty-five percent (25%) of the Units or Common Areas are condemned or the prohibition against partition is not waived, the Board shall deposit the proceeds from the eminent domain action with a bank or savings and loan association as trustee for the Owners. The Board shall then distribute such proceeds among Owners whose Units are partially or wholly taken in the proportion in which their respective interests appear, such proceeds going first to any affected Mortgagee with any excess to the respective Owners. Thereafter, the interests of those Owners whose entire Units are condemned shall cease, and such Owners shall execute all documents deemed necessary and appropriate by the Board to dispose of their respective interests. Proceeds from the condemnation of Common Areas shall be distributed equally to all Owners and any portion of the proceeds from the condemnation of Limited Common Areas shall be equally divided among the Owners to which that Limited Common Area was assigned or appurtenant at the time of the condemnation.

Section 9.3 Adjustment of Common Interests and Voting Power. In the event one (1) or more of the Units are taken by condemnation but there is no waiver of the prohibition against partition, the proportionate interests of the remaining Owners in the Common Areas shall be readjusted appropriately, and appropriate amendments to this Declaration and the Bylaws shall be made. In the event that one or more of the Units is combined according to the terms of this Declaration, the Owner of such combined Units shall have the combined proportionate interest in the Common Areas. Similarly, such combined Units would accrue to the Owner the right to two (2) votes as a Member of the Association.

ARTICLE X. EASEMENTS

Section 10.1 Nonexclusive Easements. In addition to any exclusive easements established in the Limited Common Areas, each of the Units and Common Areas shall also be subject to the following nonexclusive easements which shall be easements appurtenant to and running with the land, perpetually in full force and effect, and at all times inuring to the benefit of and being binding upon the Declarant, its successors and assigns, and any Owner, Mortgagee, purchaser, and other person having an interest in all or any part or portion of the Condominium or Property.

(a) Appurtenant to each Unit shall exist a nonexclusive easement: (1) over all the Common Areas for ingress, egress, utility services, support, maintenance and repairs to the Units; (2) over the Limited Common Areas as necessary for structural support,

utility services, maintenance and repairs; and (3) over all parts of the Condominium and Property (including all other Units and Limited Common Areas) for structural support.

(b) Should any part of the Common Areas encroach upon any Unit or Limited Common Area, a valid nonexclusive easement shall exist for such encroachment and its maintenance. In the event any improvements constituting part of the Condominium shall be partially or totally destroyed and then rebuilt, minor encroachments of any parts of the Common Areas due to construction shall be permitted, and valid nonexclusive easements shall exist for such encroachments and their maintenance.

(c) The Declarant and its successors and assigns (including, but not limited to, the Association) shall have, and are hereby granted the right and easement (to be exercised by any directors, officers, agents, employees or independent contractors) to enter any Unit and any Limited Common Areas from time to time during reasonable hours, provided at least twenty-four (24) hours advance notice is given to the particular Unit Owner (except that access may be had at anytime in case of emergency), (1) for the purpose of reconstructing, making repairs or performing maintenance, or (2) for essential operations of the Condominium, or (3) to prevent damage to any Units or Common Areas. In addition, the Declarant shall have all other easements and rights granted under the Act.

Section 10.2 Exclusive Easements. Appurtenant to the ownership of its Unit, each Owner is hereby granted and shall have an exclusive easement for ingress, egress and the use of storage lockers and Parking Spaces, if any, assigned by the Board, as Limited Common Areas. The Declarant hereby reserves for itself, its successors and assigns forever, an exclusive easement for ingress, egress and the use of all Parking Spaces, storage lockers, and Units not yet assigned to or purchased by an Owner.

Section 10.3 Encroachments. None of the rights and obligations of the Owners created by this Declaration or by the various deeds transferring ownership of the Units shall be altered in any way by encroachments attributable to the shifting or settling of the Building or any other cause. There shall be valid easements for the maintenance of said encroachments so long as they exist; provided, however, that in no event shall a valid easement be created in favor of any Owner if said encroachment occurred due to the willful conduct of said Owner in violation or breach of this Declaration.

Section 10.4 Utility Easements. The Board shall also have the power to grant and maintain appropriate easements for public utilities over, under and through the Common Areas. The rights and duties of the Owners of each Unit with respect to sanitary sewer, water, electricity, gas, telephone lines, cable television and similar facilities shall be governed by the following:

(a) Whenever sanitary sewer connections or water connections or electricity, gas, telephone or television cable lines are installed within the Condominium, which connections or any portion thereof lie in or upon Units owned by other than the Owner of the Unit served by said connection, the Board shall have the right, and is hereby granted, upon twenty-four (24) hours advance notice to the Owner of such Unit, an easement to

enter or to permit the utility companies to enter any Unit within, upon or adjacent to which said connections, or any portion thereof lie, for the purpose of repairing, replacing, and generally maintaining said connections, as and when necessary.

(b) Whenever sanitary sewer connections or water connections or electricity, gas, telephone or cable television lines are installed within the Condominium, which connections serve more than one (1) Unit, the Owner of each Unit served by said connections shall be entitled to the full use and enjoyment of those portions of said connections which service its Unit.

(c) In the event of a dispute among Owners with respect to the sharing of the costs thereof, then, upon written request to the Association from one (1) of such Owners, the matter shall be submitted to the Board, who shall resolve the dispute. The decision of the Board shall be final and conclusive upon the parties. If any of the disputing Owners is a member of the Board, he or she shall not be entitled to vote on such issue. The remaining non-disputing Board members shall appoint another Owner to serve temporarily on the Board solely for the purpose of voting on such dispute.

(d) Easements over the entire Condominium for the installation and maintenance of electric, telephone, water, gas, television and sanitary sewer lines and facilities, and for drainage facilities, and as may be required from time to time to service the Condominium, are hereby reserved by Declarant together with right to grant and transfer the same.

Section 10.5 Original Assignment of Limited Common Areas. The Declarant hereby reserves the right to assign specific Parking Spaces and create and assign storage lockers in the basement of the buildings which are Limited Common Areas, and which shall be for the use of such designated Unit Owners upon their purchase of Units. All Limited Common Areas not so assigned to another Owner, or to the Association herein, shall be assigned to and reserved for the exclusive use of the Declarant or its affiliates until such time as (a) these areas are assigned to a Unit, or (b) the Special Declarant Rights described herein have either expired or been fully exercised, or assigned to the Association, and the Declarant no longer has an ownership interest in any Unit. The assignments of Parking Spaces and storage lockers may not be changed except by amendment of the written instruments assigning the affected space and/or locker in a form substantially similar to the original assignment instrument executed by the affected Unit Owners. Provided however, upon reasonable notice to an Owner, the Declarant or the Board shall have the right without the Owner(s) consent to substitute another Parking Space for a Parking Space which has previously been assigned to an Owner as a Limited Common Area if one or more Parking Spaces must be reconfigured to reasonably accommodate a disabled person in accordance with applicable local, state or federal law.

Section 10.6 Easements. The Declarant also hereby reserves in favor of itself, its successors and assigns, its general contractor, architect, engineer, appropriate City inspectors, and the Manager and any other Person authorized by the Board, any and all easements and rights-of-way through, under, over and across the Condominium and Property for any future construction purposes and for the construction, installation, maintenance, repair and inspection of

the Building and any and all improvements, structures and landscaping located on or about the Condominium or as reserved by Declarant under Article XI.

**ARTICLE XI.
SPECIAL DECLARANT RIGHTS**

Section 11.1 General Reservation. Upon the filing of this Declaration and the Plat, the Declarant shall be the Owner of each of the Units thereby created and shall retain all rights, benefits and obligations as Owner of the Property, subject to the terms of this Declaration, until each individual Unit that may be created hereunder is sold to some other Person. If applicable, upon the sole discretion of Declarant, any Development Right reserved below may be exercised with respect to different parcels at different times. The Declarant reserves all Special Declarant Rights and all Development Rights, including the following Special Declarant Rights and Development Rights with respect to the Condominium:

(a) Within twenty (20) years after the recording date of this Declaration, the Declarant shall have the right to add additional Units (whether by redesign or otherwise) to the Condominium without the vote or assent of the existing Owners. Such additional Units shall be added to the Condominium by written amendments to the Declaration and other applicable documents, describing said additional Units and incorporating by reference the provisions of this Declaration and any prior amendments hereto. Such amendments may be executed and recorded by the Declarant without the vote or assent of the existing Owners. Such amendments shall be prepared in accordance with the Act and shall be effective upon recording and shall provide for the modification of the Common Area Interest for each Unit as provided in Section 3.07, using the formula for computing the interest as set forth therein. Each Owner, by accepting title to any Units subject to this Declaration, shall be deemed to have irrevocably appointed the Declarant as its attorney-in-fact to act in its behalf (or that of its heirs and assigns), in adding additional Units and in granting and conveying appropriate interests in any Common Area for such addition. The Declarant as attorney-in-fact shall, among other things, be authorized to execute all instruments necessary to fully implement such addition, without the further consent or approval of the Owners. The Special Declarant Rights reserved herein shall extend to the addition of no more than ten (10) Units. Such rights, however, shall be exercised in such manner as to assure that, after the addition or withdrawal, the Condominium is in compliance with all applicable zoning and building regulations relating to, among others issues, building setback, height and bulk. The Declarant, or its successor or assigns, shall have the sole option and discretion to determine whether or not to incorporate any such additional Units into the Condominium.

(b) The Declarant, or its successors or assigns, reserves the right to use the Common Areas or easements through the Common Areas for the purposes of making improvements within the Condominium or adding Units to the Condominium (or any real estate incorporated as Additional Property) pursuant to any Special Declarant Rights reserved in this Declaration.

(c) The Declarant reserves the right to maintain one (1) or more sales or leasing offices and signs advertising the Condominium in any Unit or upon the Common

Areas. Declarant reserves the right to maintain a banner sign on the exterior of the Building or Buildings within the Condominium containing general advertising for a period of up to five (5) years after the closing date of the first Unit sold by Declarant within the Condominium.

(d) The Declarant reserves the right, power and authority to lease portions of the Common Areas to third parties for purposes of providing facilities for the benefit and the use of the Owners and Members of the Association. The tenants of such portions of the Common Areas shall pay their pro rata share of the Association's taxes and assessments which affect and benefit the leased premises. The Association shall ratify the leases entered into on behalf of the Association by the Declarant and the Declarant shall assign to the Association all of the landlord's right, title and interest in said leases, whereupon the Association shall be responsible for performing the duties and obligations of the landlord.

(e) The Declarant reserves the right, power and authority to amend this Declaration and the Plat during the Declarant Control Period without the consent of the Owners other than Declarant.

(f) The Declarant reserves the right to construct the Buildings over a period of time, without time limitation. The Declarant anticipates construction of the entire project within seven (7) years.

(g) The Special Declarant Rights reserved herein shall automatically terminate if not exercised within ten (10) years after the date this Declaration is originally recorded. The Declarant, or its successors, may voluntarily terminate such Development Rights prior to the time so designated, by executing a written instrument in the same manner as this Declaration and recording it in Johnson County, Kansas.

Section 11.2 Indemnification of Owners. The Declarant shall indemnify and hold each Owner harmless from all liabilities, including reasonable attorneys' fees, which are incurred as a direct result of the execution by the Declarant of any improvement agreements or bonds, or both, in connection with the exercise by the Declarant of Development Rights reserved herein.

Section 11.3 Successors-in-Interest. Subject to the provisions of Section 11.04 hereof, each and every Owner and its respective Mortgagees, grantees, licensees, trustees, receivers, lessees, tenants, judgment creditors, heirs, legatees, devisees, administrators, executors, legal representatives, successors and assigns shall be deemed to have expressly agreed, assented and consented to each of the provisions of this Declaration and shall be deemed to have constituted and irrevocably appointed the Declarant as its lawful attorney-in-fact to carry out the powers described in Section 11.01 hereof, and such power of attorney shall be deemed to be coupled with an interest and shall be irrevocable.

Section 11.4 Effects Upon Mortgage Interests. The acceptance or creation of any Mortgage or other encumbrance, whether voluntary or involuntary, and whether or not created in good faith and for value shall be deemed to be accepted and created subject to each of the terms and conditions of the power of attorney described in Section 11.01 hereof.

Section 11.5 Effect on Assessment Liens. The recording of a Declaration of redesign in accordance with the provisions of Section 11.01 above shall not alter or affect the amount of any regular or special assessments levied and payable from any Owner prior to such recording or the liens thereof; provided, however, that all liens for assessments previously created under the Declaration shall be released upon payment of said liens by each respective Owner.

ARTICLE XII. TRANSFERS OF PROPERTY

Section 12.1 Release Procedures. Except as permitted in Article XI of this Declaration, any portion of the Condominium may be released from the effects of this Declaration, only upon (a) prior written consent of all Mortgagees and all Owners of any of the fee interest in the property to be released, and the holders of any Mortgage encumbering any property to be released, and (b) recordation in the office of the Register of Deeds of Johnson County, Kansas, of an amendment to this Declaration executed by an authorized officer of the Association, and by all fee Owners and Mortgagees whose approval is required as aforesaid, containing a reference to this Declaration, including recording information, a description of the property to be released, a statement that such property has been released from the effects of this Declaration, a recitation of the manner in which such release was approved in compliance with the foregoing, all other information, plats and any other documents required by the Act, and such other statements terms, conditions, restrictions and other provisions relating to the release, as the signatories to such instrument shall deem appropriate in furtherance of the purposes of this Section 12.01, the Association and this Declaration.

Upon removal of a portion of the Condominium from the provisions of the Declaration and Act, the property shall be deemed to be owned by all Owners as tenants in common. The undivided interest in the property owned in common, which shall appertain to each Owner, shall be the percentage of undivided interest previously owned by such Owner in the Common Areas.

Section 12.2 Effect of Release. From and after the recordation of an amendment to this Declaration releasing property as provided in Article XI or XII, the released property shall cease to be a part of the Condominium and shall be fully released from and shall not be subject to any covenant, condition, restriction, term or other provision of this Declaration.

ARTICLE XIII. PARTITION

Section 13.1 Prohibition. In accordance with the Act, none of the Common Areas shall be subject to partition; and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Areas or Limited Common Areas, which is made apart from the conveyance, encumbrance, sale or transfer of the Unit or Units to which that interest is assigned or appurtenant, shall be void and of no effect. The right to hold assigned Limited Common Areas may be re-assigned by the holder but only to the Declarant, to another Owner, or to a purchaser in conjunction with the sale of a Unit to that purchaser by filing with the Board a written instrument of assignment executed by both assignor and assignee. Assigned storage lockers and Parking Spaces may be re-assigned by the Board



upon request by the affected Owner or Owners at any time or in connection with the reconfiguration of any Parking Spaces by the Declarant or the Board to accommodate any disabled person. Nothing in this Declaration, however, shall preclude a judicial partition of any Unit between two (2) or more Owners as tenants in common or joint tenants or tenants by the entireties if such right of partition shall otherwise be available; but no such partition shall be in kind.

Section 13.2 Waiver.

(a) Notwithstanding the provisions of the Act, the Members may waive the prohibition against partition upon the affirmative vote of at least sixty-seven percent (67%) of the membership of the Association and only in the event of the taking of all or a portion of the Common Areas or any Unit by a public authority under the power of eminent domain pursuant to State law.

(b) Upon receiving notice from a public authority that it intends to take all or a portion of the Common Areas, sixty-seven percent (67%) of the membership of the Association may, by written vote or consent, filed with the Board, specifying the applicable portions of the Common Areas, waive the prohibition against partition described in Section 13.01 above and elect to partition the specific Common Areas of the Condominium. Thereafter, the Board shall cause a certificate to be prepared, executed, acknowledged and recorded which shall state that the power of attorney described in Section 13.03 below is properly exercisable and that the conditions set forth in this Section 13.02 for a waiver of the prohibition against partition have occurred. Following such recording, the Board shall sell those parts of the Common Areas specified in the written vote or consent of the Members, for the benefit of all the affected Owners and, subject to the provisions of Section 13.04 below, shall distribute the proceeds, less the applicable costs of sale, to the affected Owners. In the event those portions of the Common Areas taken by eminent domain do not affect any one (1) specific Owner more than another, then the Association shall distribute the proceeds to all of the Members equally on the basis of their respective Common Area Interests. Proceeds payable to Owners shall be distributed first to the respective Mortgagees of the applicable Units, with any excess distributable to the affected Owners.

Section 13.3 Power of Attorney. In the event the prohibition against partition is waived, each Owner and its respective heirs, executors, successors, grantees and assigns hereby irrevocably appoints the Board, as it may be constituted from time to time, as its true and lawful attorney-in-fact with full power and authority to act on behalf of and in the name, place and stead of each Owner, in selling or otherwise disposing of its respective interest in the Unit, or affected portions of the Condominium, to appoint real estate brokers and appraisers, to collect and remit the proceeds as provided in Section 13.02 above, and to make any appropriate amendments to this Declaration that may be necessary or desirable on account of such waiver of partition. Each Owner agrees that this power of attorney is coupled with an interest in the Condominium and shall survive the assignment, sale or transfer by any Owner of its individual Unit or interest therein. The foregoing power of attorney shall be binding upon all of the Owners and may be exercised by a majority vote of the Board.

Section 13.4 Distribution to Mortgagees. In the event any Owner's Unit or interest in the Condominium is subject to a recorded Mortgage at the time of sale or other disposition of the Condominium, or part thereof, as a result of a partition pursuant to Section 13.02 above or as a result of a casualty pursuant to Article VIII hereof, then any proceeds due such Owner shall be paid and applied first to the Mortgagee; and in the event there are multiple Mortgagees of the same Unit the proceeds shall be applied successively to each Mortgage in the order of their priority in the amount necessary to discharge each successive Mortgage, with the excess, if any, paid to the subordinate Mortgages in the order of priority. Upon payment of amounts necessary to discharge all Mortgagees the excess, if any, shall be paid to the Owner.

Section 13.5 Conveyance of Common Areas.

(a) Notwithstanding anything in this Declaration to the contrary, portions of the Common Areas may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least fifty-one percent (51%) of the votes in the Association, including fifty-one percent (51%) of the votes allocated to the Units not owned by the Declarant, agree to that action; provided that all the Owners to which any Limited Common Areas are assigned or appurtenant shall agree before that Limited Common Area may be conveyed or subjected to a security interest. All proceeds from any such sale shall constitute assets of the Association to be held or distributed in accordance with the terms of this Declaration.

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

(c) The Association may contract to convey Common Areas, or subject them to a security interest on behalf of the Owners, but no such contract shall be enforceable against the Association unless or until executed and recorded in the manner set forth above. The Association shall have all powers necessary or appropriate to effect the conveyance or encumbrance of the Common Areas, including the power to execute deeds or other instruments. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of the Common Areas, shall be void and of no effect, unless made in accordance with this Declaration and the Act. No conveyance or encumbrance of Common Areas pursuant to this Declaration shall deprive any Owner of its continued right of access and support or otherwise affect pre-existing encumbrances.

**ARTICLE XIV.
TERMINATION OF CONDOMINIUM**

Section 14.1 Agreement. Except in the case of a taking of all the Units by eminent domain, the Condominium may be terminated only by agreement of Owners of Units to which at least ninety percent (90%) of the votes in the Association are allocated. An agreement to terminate shall be evidenced by the execution of a termination agreement or ratifications thereof,

in the same manner as a deed, by the requisite number of Owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in the office of the Register of Deeds of Johnson County, Kansas, and is effective only upon recordation.

Section 14.2 Common Areas Sold. A termination agreement may provide that all the Common Areas and Units shall be sold following termination of the Condominium. If, pursuant to the agreement, any Property in the Condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale and shall be subject to the requirements of the Act. Upon the recording of such termination agreement, the entire Condominium may be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat and the Bylaws. The sales proceeds shall be distributed to all Owners and lien holders as their interests may appear on the basis of each Owner's Common Area Interest in accordance with the Act.

ARTICLE XV. PROTECTION OF MORTGAGEES

Section 15.1 Notice to Association. An Owner who mortgages his Unit shall notify the Association of such mortgage, giving the name and address of his mortgagee. Each mortgagee shall be permitted to notify the Association of the fact that such mortgagee holds a deed of trust or mortgage on a Unit. The Executive Board shall maintain such information in a book entitled "Mortgagees of Units."

Section 15.2 Notice of Default and Statement for Assessments. The Association shall notify any Eligible Mortgagee in writing, upon written request, of any default by an Owner in the performance of such Owner's obligations as set forth in this Declaration. Each Mortgagee also has the right to a Statement of Assessments as provided in Section 7.09 hereof.

Section 15.3 Examination of Books. The Association shall permit any Mortgagee who has received Notice of Default pursuant to Section 15.02 to examine the books and records of the Association upon request.

Section 15.4 Annual Accounting Reports. The Association shall furnish each Owner with an audited annual financial statement of the Association within one hundred twenty (120) days following the end of each fiscal year of the Association, and it shall be the responsibility of each Owner to deliver a copy of such statement to such Owner's Mortgagee. The Association shall make an audited financial statement available to any Mortgagee, including the insurer or guarantor of any first mortgage secured by a Unit upon written request for such audited financial statement.

Section 15.5 Notice of Meetings. The Association shall furnish each Eligible Mortgagee, upon written request of such mortgagee, prior written notice of all meetings of the Association within the six (6) month period after the date of such request by such mortgagee, and shall permit the designation of a representative of such mortgagee to attend such meetings.

Section 15.6 Approval for Amendments to Declaration and Bylaws. The prior written approval of at least fifty-one percent (51%) of Eligible Mortgagees of Units subject to

Mortgages shall be required for any material amendment of the provisions of the Declaration or Bylaws that would have the following result:

- (i) Change in Voting Rights of Owners;
- (ii) Change the subordination of liens for assessments authorized herein;
- (iii) Reduce the reserves for maintenance, repair and replacement of the Common Areas;
- (iv) Eliminate any requirements herein to provide Insurance or change the hazard or fidelity insurance requirements;
- (v) Eliminate the rights to use of the Common Areas by Owners;
- (vi) Eliminate more than fifty percent (50%) of the Association's responsibilities for maintenance and repair of the Project;
- (vii) Reallocation of interests of Owners in the General or Limited Common Areas, or rights to their use;
- (viii) Restrictions of the Owners' rights to lease the Units;
- (ix) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit;
- (x) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), or affect assessment liens or the priority of assessment liens;
- (xi) Redefinition of any Unit boundaries;
- (xii) Convertibility of Unit(s) into Common Areas or vice versa;
- (xiii) Expansion or contraction of the Condominium, or the addition, annexation, or withdrawal of property to or from the Condominium;
- (xiv) Changes to provisions regarding restoration or repair of the Condominium after damage or partial condemnation in a manner other than specified in the Declaration;
- (xv) Any provisions which are for the express benefit of such Mortgagees.

Any such amendment must also be approved by Owners as provided in Section 16.14 hereof. No requirement for Mortgagee approval may operate to (i) delegate control over the general administrative affairs of the Association by the Owners or the Executive Board, or (ii) prevent the Association or the Executive Board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except as provided in Article XV hereof.

Section 15.7 Notice of Damage, Destruction, Lapse or Proposed Action. The Association shall furnish any Eligible Mortgagee timely written notice of any substantial damage or destruction of any Unit if such loss exceeds FOUR THOUSAND DOLLARS (\$4,000.000). Such notice shall also be provided in the event of any lapse or cancellation of any insurance policy required to be maintained by the Association. Finally, such notice shall also be provided with regard to any proposed action relating to any matter described in Section 15.06 hereof.

Section 15.8 Taxes, Assessments and Charges. Unless otherwise provided by law, all taxes, assessments, and charges which may become liens prior to any Mortgage under local law shall relate only to the individual Units and not to the Project as a whole.

Section 15.9 Other Acts Requiring Approval of Eligible Mortgagees. Unless fifty-one percent (51%) of the Eligible Mortgagees on Units subject to Mortgages have given their prior written approval, the Association and the Owners shall not be entitled to:

(a) By act or omission, seek to abandon, subdivide, encumber, sell or transfer any portion of the Common Areas;

(b) Use insurance proceeds for losses to any part of the Project (whether to Units or to Common Areas) for other than the repair, replacement or reconstruction of such part of the Project, except as provided by law or as otherwise provided in this Declaration; and

(c) Terminate the Project as a Condominium pursuant to the provisions of Article XIV hereof.

The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Project shall not be deemed a transfer within the meaning of this Section 15.09.

ARTICLE XVI. GENERAL PROVISIONS

Section 16.1 Performance Easement. The Condominium shall be subject to, and each Owner shall be deemed to have granted, a perpetual non-exclusive easement for the benefit of the Association, the Board, the Manager, and their respective employees, agents, successors and assigns, for ingress and egress upon any portions of the Condominium for the purpose of performing their respective obligations and duties under this Declaration, the Association's Articles, the Bylaws, and the Act.

Section 16.2 Binding Effect and Duration. This Declaration and all covenants, conditions, restrictions, terms, provisions, rights, obligations and easements hereunder (a) are made for the direct, mutual and reciprocal benefit of each portion of the Condominium, each Owner and any Mortgagees thereof, the Association and the Declarant; (b) create mutual equitable servitudes upon each portion of the Condominium in favor of every other portion; (c) constitute covenants running with the land; (d) bind and inure to the benefit of the Association, the Declarant, all Owners and all future Owners, and the heirs, personal representatives, successors and assigns of each of the foregoing; and (e) shall continue in full

force and effect for a term of twenty (20) years after the date of this Declaration, after which time they shall be automatically renewed and extended for successive periods of ten (10) years. Notwithstanding the foregoing, this Declaration may be terminated at any time as set forth in Article XIV hereof.

Section 16.3 Delayed Effectiveness. Notwithstanding any provision in this Declaration to the contrary, as long as the Declarant owns all of the Units, Declarant, at its option, may perform any or all of the duties and responsibilities of the Association and pay any or all expenses thereof; the Association shall not be required to levy any assessments of any kind; and no meetings of the Board or the Owners shall be required.

Section 16.4 Enforcement. The Association, Declarant, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, restrictions, terms, provisions, duties, obligations, rights, privileges and liens now or hereafter imposed or created by or pursuant to the provisions of this Declaration. The failure of any of the foregoing to enforce any provision of this Declaration at any time or for any period of time shall not be deemed a waiver of the right to do so thereafter. The Association may impose such monetary and non-monetary sanctions and penalties on Owners as it shall deem appropriate for violations of the provisions of this Declaration or of rules and regulations duly adopted by the Association. All monetary sanctions and penalties shall constitute liens on the property of the offending Owner enforceable as provided in Article VII hereof. The Association may charge the costs of enforcement, including reasonable attorney's fees, to the violating Owner personally and to such Owner's Unit as a Special Assessment. In addition, the failure of an Owner to comply with any sanction or penalty imposed by the Association may result in criminal prosecution for trespass and other appropriate offenses.

Section 16.5 Consent of Board for Litigation. If the Board of Directors of the Association reasonably determines that litigation for enforcement of this Declaration is appropriate after due consideration, the Board shall have the authority to proceed with such litigation. All costs and expenses of any action or proceeding to enforce this Declaration shall be funded by means of a Special Assessment pursuant to Section 7.05 hereof, which may be assessed against the Owner and Unit which is the subject of the litigation. Whenever the Association is named as a defendant in an arbitration or litigation; the costs of such action shall be funded by Special Assessment against all Owners and Units.

Section 16.6 Notices. Any notice to be given hereunder shall be deemed to be duly given three (3) business days after it has been deposited in the United States mail, postage and all fees prepaid, by certified or registered mail or one (1) business day after deposit with Federal Express or other overnight courier with a comparable national reputation for reliability or the day of delivery with respect to personal service (except for notices of meetings and assessments, which may be sent by regular mail without certification or registration) and addressed to the Association at its principal business office, to an Owner at the most recent address of such Owner appearing on the records of the Association, or to the Declarant at 5427 Johnson Dr., #198, Mission, KS 66205, Attn: Bryan Smith. The address for receipt of notices by the Association, the Declarant or any Owner shall be deemed changed as to any of the foregoing who receive written notice of such change from the party whose address has changed.

Section 16.7 Severability. If any covenant, restriction, obligation, term or condition of this Declaration, or the application thereof to any Person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Declaration, or the application of such covenant, restriction, obligation, term or condition to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each such covenant, restriction, obligation, term or condition of this Declaration shall be valid and fully enforceable.

Section 16.8 Section Headings. The headings of Articles and Sections of this Declaration are for convenience only and shall not be considered in construing or interpreting its provisions.

Section 16.9 Kansas Apartment Ownership Act. The provisions of this Declaration shall be in addition and supplemental to the Act and all other provisions of law.

Section 16.10 Gender and Number. Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

Section 16.11 Board as Attorney-in-Fact. Wherever in this Declaration the Board is given the power and right to grant easements, the Owner of each Unit does hereby appoint the Board as its attorney-in-fact for the purpose of granting and effecting the same, and the appointment of the Board as attorney-in-fact shall be deemed confirmed, adopted and ratified by the actions of each Owner in accepting the deed and closing on the purchase of its Unit.

Section 16.12 Non-Severability of Common Interests. The undivided interests in the Common Areas appurtenant to each Unit shall not be separated from the Unit and shall pass to the purchaser, along with the title to the Unit, whether or not separately described in the deed or instrument of conveyance. The interest in the Common Areas appurtenant to each Unit cannot be conveyed or encumbered except in concert with a Unit.

Section 16.13 Interpretation. The provisions of this Declaration shall be construed liberally to effect its purpose of creating a uniform plan for the development and operation of the Condominium. Failure to enforce any provision shall not constitute a waiver of the right to enforce the same or any other provision of this Declaration at a later date. All references herein to the singular number shall be deemed to include the plural and vice versa. All references to one gender shall be deemed to include the other. This Declaration shall be governed under the laws of the State.

Section 16.14 Amendment.

(a) Except as otherwise specifically provided in this Declaration or the Act, the provisions of this Declaration and of this Article XVI may be amended only by an instrument in writing signed and acknowledged by Owners representing sixty-seven percent (67%) of the Members in the Association. Nevertheless, the percentage of votes necessary to amend a specific provision shall not be less or more than the percentage of affirmative votes prescribed herein for action to be taken under that provision. Any such amendment shall be effective upon its recording in the office of the Register of Deeds in Johnson County, Kansas.

(b) Prior to the transfer of management and control of the Common Areas to the Association as provided in the Bylaws, and notwithstanding anything to the contrary in this Declaration, the Declarant (subject to the rights of Mortgagees) shall have the right to amend this Declaration at any time, without notice to or the consent of any other Owner, by recording the amendment in the office of the Register of Deeds in Johnson County, Kansas. Without limitation of the foregoing and notwithstanding anything to the contrary in this Declaration, Declarant reserves the right to amend this Declaration at any time, without notice to or the consent of any other Owner, if such amendments are necessary or desirable to comply with the requirements of Freddie Mac, Fannie Mae, FHA or VA in connection with the financing or refinancing of Units.

(c) Except as expressly required in the Act, no amendment may create or increase Development Rights reserved by the Declarant pursuant to Article XI herein, increase the number of Units, or change the boundaries of any Unit, the Common Area Interests of a Unit, or the uses to which any Unit is restricted, in the absence of unanimous consent of the Unit Owners.

(d) All amendments to the Declaration required by the Act to be recorded by the Association shall be prepared, executed, and certified on behalf of the Association by any officer of the Association designated for that purpose or, in the absence of designation, by the president of the Association.

Section 16.15 Organization and Regular Meetings. Regular meetings of Members of the Association shall be held not less frequently than once each calendar year at a time and place prescribed in by the Bylaws. Special meetings of the Association may be called by the president or by twenty percent (20%), or any lower percentage specified in the Bylaws, of either the Board or the Owners. Not less than ten (10) nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

Section 16.16 Attorney's Fees. In the event the Board or any Owner shall bring legal action against any other Owner or the Board to enforce the terms, covenants, conditions and restrictions of this Declaration, the court shall award reasonable attorneys' fees and court costs to the prevailing party.

Section 16.17 Assignability. Declarant shall have the power to assign all or any of its rights under this Declaration to any other party without the consent of the Association or the Owners. In the event such assignment occurs and the assignee assumes the obligations and liabilities of the Declarant, the Declarant shall be relieved, discharged and released from all obligations under this Declaration, and such obligations shall pass to and be assumed by the assignee to the extent of any such assignment and assumption.

