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801 Poyntz Avenue
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<i>Title of Document:</i>	Declaration of Easements, Covenants, Conditions and Restrictions for Pinehurst Villas
<i>Date of Document:</i>	December 29, 2017
<i>Legal Description:</i>	Lots 1A through 10B, Pinehurst Addition, in the City of Manhattan, Riley County, Kansas

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR PINEHURST VILLAS**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS is made and entered into as of this 29th day of December, 2017, by The Carson Company, a Kansas corporation (herein called the "Developer").

NOTICE OF INTENT

This Declaration provides for an extensive degree of control in the Developer, including but not limited to (i) control of the Association and supervision over the type and design of improvements which may be constructed within the Community and upon the Lots located therein (including fines for noncompliance); (ii) the right to amend this Declaration; and (iii) substantial flexibility in developing the Community. The provisions hereof also contain limitations on the liability of the Developer. Each Owner, by accepting title to a Lot, and each Member, by accepting such membership, acknowledges, agrees to, and accepts the Developer's control of the Community and the limited liability of the Developer and its partners provided for in this Declaration. Such control is an integral part of this Declaration and the general scheme of development and operation of the Community. Capitalized terms used in this and the following introductory paragraphs are defined in Article I of this Declaration.

WITNESSETH:

WHEREAS, Developer is the record owner of that certain real property situated in the City of Manhattan, Riley County, Kansas, described as follows:

Lots 1A through 10B, Pinehurst Addition, in the City of Manhattan, Riley County, Kansas;

which shall constitute the Community; and

WHEREAS, Developer desires to submit and subject the Community, together with all buildings, improvements, and permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging or in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights contained herein; and

WHEREAS, Developer deems it desirable to establish easements, covenants, conditions, obligations, and restrictions upon the Community and each and every portions thereof with respect to the proper use, occupancy, and enjoyment thereof, all for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Community; and

WHEREAS, Developer deems it desirable for the efficient management of the Community, to create the Association which shall exercise the powers of: (i) administering and enforcing the

easements, covenants, conditions, and restrictions set forth herein; (ii) collecting and disbursing funds pursuant to the assessments, spending procedures, and charges hereinafter created; and (iii) performing such other acts as are herein provided for which generally benefits its Members, the Community, or the owners of any interests therein; and

WHEREAS, Pinehurst Villas Community Association, Inc., a Kansas corporation not organized for profit, has been or will be incorporated under the laws of the State of Kansas for the purpose of exercising such powers and functions; and

WHEREAS, the Developer may, but is not obligated to annex additional real property to the Community, and thereby subject such property to this Declaration, and to bind the owners of any interest there in to the easements, covenants, conditions, and restrictions contained in this Declaration; and

WHEREAS, Developer desires and intends that the Owners, mortgagees, mortgagors, Occupants, and all other Persons hereafter acquiring any interest in the Community shall at all times enjoy the benefits of, and shall hold their interest subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights herein set forth, all of which are declared to be in furtherance of a plan to promote and protect the Community.

NOW, THEREFORE, Developer for the purposes above set forth, declares that all property within the Community shall hereafter be held, transferred, sold, conveyed, leased, occupied, and used subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, and rights hereinafter set forth, all of which shall run with the land and be binding upon all property within the Community and all parties having or acquiring any right, title, or interest in or to any property within the Community, or any part thereof, and shall inure to the benefit of and be a burden upon each Owner and each Member of the Association.

Article I **Definitions**

The terms used in this Declaration shall have the meanings stated in the Kansas Townhouse Ownership Act, K.S.A. 58-3701 through 58-3713, as such act may be amended from time to time, and which is hereinafter referred to as the Townhouse Ownership Act, and as follows, unless the context otherwise requires:

- 1.01 “Additional Property” shall mean any additional real property that is annexed to the Community, in accordance with the provisions of Article XII below.
- 1.02 “Assessments” shall include the following:
 - A. “Regular Assessment” shall mean the amount which is to be paid by each Owner as such Owner’s share of the Common Expenses of the Association.

- B. "Special Assessment" shall mean (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Association for costs incurred in bringing the Owner or Owner's Lot into compliance with the provisions of this Declaration, the Design Standards, or the Association Rules; (ii) any other charge designated as a Special Assessment in this Declaration, the Association Rules, or Design Standards; and (iii) attorneys' fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration.
- 1.03 "Association" shall mean the Pinehurst Villas Community Association, Inc., a Kansas not for profit corporation and Association for Townhouse Owners established for the primary purpose of enforcing the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein.
- 1.04 "Association Articles" shall mean the articles of incorporation establishing the Association as a not for profit corporation under Kansas law.
- 1.05 "Association Board" or "Board" shall mean the Board of Directors of the Association.
- 1.06 "Association Bylaws" shall mean the bylaws governing the Association.
- 1.07 "Association President" shall mean the duly elected or appointed President of the Association.
- 1.08 "Association Rules" or "Rules" shall mean the rules and regulations, if any, adopted by the Association.
- 1.09 "City" shall mean the City of Manhattan, Kansas, a municipal corporation of the State of Kansas.
- 1.10 "Common Expenses" shall mean the costs incurred by the Association in conducting activities for which the Association is responsible pursuant to the terms hereof. Common Expenses shall include, but not be limited to, the following:
- A. the cost of maintenance, management, operating, repair, and replacement of all areas and facilities within the Community that are owned, maintained or operated by the Association;
 - B. unpaid Assessments;
 - C. the cost of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, superintendents, attorneys, and employees;
 - D. the cost of utilities (including, but not limited to water, electricity, gas, sewer, trash

pick-up and disposal which are provided directly to the Association and not individually metered or assessed by Lot), landscaping maintenance, snow removal, and other services which generally benefit and enhance the value and desirability of the Community and which are provided by the Association;

- E. taxes of any nature owing by the Association and the cost of any insurance maintained by the Association;
 - F. reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Association;
 - G. the cost of bonding which may be required with respect to any person handling the funds of the Association;
 - H. costs incurred by the committees established by the Association, the Association Articles, the Association Bylaws, the Association Board or the Association President;
 - I. the common maintenance expense described as Association Maintenance Responsibilities, as defined herein; and
 - J. the costs of any other item or items to be provided or performed by the Association pursuant to this Declaration or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.
- 1.11 “Community” shall mean Lots 1A through 10B, Pinehurst Addition, in the City of Manhattan, Riley County, Kansas, together with any Additional Property.
- 1.12 “County” shall mean Riley County, Kansas.
- 1.13 “Developer” shall mean The Carson Company, a Kansas corporation, its successors and assigns, or any person or entity to whom Developer’s rights hereunder are assigned in writing.
- 1.14 “Declaration” shall mean this Declaration and any amendments thereto.
- 1.15 “Design Standards” shall mean the rules, regulations, restrictions, architectural standards, and construction guidelines herein designated as such and as otherwise which may from time to time be adopted by Developer or the Design Review Committee, as the case may be.
- 1.16 “Design Review Committee” or “DRC” means the committee provided for in Article VII, Section 7.01 below.
- 1.17 “Lot” shall mean a subdivided lot within the Community as shown on the applicable

recorded Plat.

- 1.18 “Master Association” means the Grand Mere Property Residential District Master Association, a Kansas corporation not organized for profit, its successors and assigns, which shall be responsible for implementing the terms of the Master Declaration.
- 1.19 “Master Declaration” means that certain Declaration of Easements, Covenants, Conditions, and Restrictions for the Grand Mere Property Residential District Master Association and any amendments thereto or modification thereof.
- 1.20 “Member” of the Association shall mean any Person who or which is a record Owner of a fee or undivided fee interest in any Lot. If such Owner is or includes a Person other than an individual, an individual designated in writing must be designated by the Owner to be the Member representative. A Member of the Association shall not include any Owners who have sold their interest under executory contract. During such time as the contract is enforced, the contract vendee shall be considered to be the Member. When more than one Person holds an interest in a Lot, all such Persons shall be Members of the Association.
- 1.21 “Native Grass” shall mean the natural prairie grass areas that are located upon each Lot on the portion of each Lot that is appurtenant to Grand Mere Parkway.
- 1.22 “Owner” shall mean the Person or Persons owning the real estate in fee simple on which a Townhouse Unit is located.
- 1.23 “Person” shall mean an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and his, her, or its respective heirs, representatives, successors, and assigns.
- 1.24 “Plat” shall mean the plat of the Lots comprising the Community as recorded in the Office of the Register of Deeds of Riley County, Kansas.
- 1.25 “Record” or “Recording” shall mean an instrument of record in, or the act of recording an instrument with, the Office of the Register of Deeds of Riley County, Kansas.
- 1.26 “Supplemental Declaration” shall mean a declaration of easements, covenants, conditions, and restrictions, or similar instrument, annexing Additional Property to the Community and subjecting such property to this Declaration, pursuant to Article XII below.
- 1.27 “Townhouse Unit” shall mean a townhouse unit defined by the Townhouse Ownership Act and a part of a building which contains Townhouse Units joined together by a common or party wall, and having a common roof and foundation. Each Townhouse Unit is a part of the Lot on which it is situated.

Article II **Declaration**

In accordance with the provisions of the Master Declaration, Developer hereby establishes the Community and this Declaration to govern the design, maintenance, use, and occupancy of Lots and improvements within the Community. In the event of any conflict between this Declaration and any provision of the Master Declaration, the Master Declaration shall control unless the Master Declaration has a less restrictive provision that is in conflict with the Declaration provision, in which event the more restrictive provision shall control.

Article III **Scope**

The covenants, conditions, restrictions, liens, assessments, easements, privileges, rights and other provisions contained herein shall encompass the Community and, pursuant to Article XII, the Additional Property as set forth in the Plat recorded with the Office of the Riley County Register of Deeds.

Article IV **The Association**

- 4.01 Formation of Association. The Association has been, or will be, organized as a non-profit corporation for a perpetual term under the laws of the State of Kansas.
- 4.02 Purpose of the Association. The Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the Community, including taking such action as is necessary for the assessment of expenses, payment of losses, disposition of casualty insurance proceeds (if any), and other matters as provided in or contemplated by this Declaration, the Association Articles, the Association Bylaws, the Association Rules or Design Standards.
- 4.03 Duties of the Association. In addition to the duties delegated to the Association by the Association Articles and Association Bylaws, and without limiting the generality thereof, the Association shall have the following duties:
- A. Maintenance and Management. To maintain in a safe and first class condition the exterior of the Townhouse Units, the landscaping of the Lots and any other property not otherwise maintained by individual Owners. The Association has the authority to ensure that the property maintained by individual Owners meets such criteria.
 - B. Insurance. To obtain and maintain in force appropriate policies of insurance, which shall include without limitation, directors and officers liability coverage with a limit of not less than one million dollars (\$1,000,000) for claims for personal injury and/or

property damage arising out of a single occurrence.

- C. Rules. To make, amend and repeal the Association Rules.
- D. Design Review Committee. To appoint and remove members of the Design Review Committee, subject to the provisions of this Declaration.
- E. Taxes and Assessments. To pay all taxes and assessments which are or could become a lien on any property of the Association.
- F. Budget. To create a budget for each accounting year of the Association, other than the Association's first accounting year. A budget shall be proposed and adopted by the Association Board on an annual basis in accordance with Article V, Section 5.03(B) below. Prior to the adoption of said budget: (1) all Members must receive notice that the Association Board is proposing said budget at least ten (10) days in advance; (2) a copy of the proposed budget must be available to any Member who requests it; and (3) Members must be given a reasonable opportunity to comment on the proposed budget before the Association Board adopts the budget.
- G. Easements. The Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Association such permits, licenses, easements, and rights of way for sewer lines, water lines, underground conduits, storm drains, television cable, and other similar public or private utility purposes, roadways or other purposes as may be reasonably necessary and appropriate for the orderly maintenance, preservation, and enjoyment of all or any part of the Community or the preservation of the health, safety, convenience and welfare of the Owners.
- H. Records. To, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Member the books, records (including but not limited to minutes of meetings), and financial statements of the Association together with current copies, as amended from time to time, of this Declaration and the Association Articles, Association Bylaws, Association Rules, and Design Standards. The Association shall retain copies of the following records for a period of five (5) years: (1) all receipts and expenditures; (2) minutes of all meetings except for executive sessions of the Association Board; (3) names of all Owners and/or Association Members, in alphabetical order, with addresses; (4) the Declaration, Association Bylaws and Association Rules; (5) names and addresses of current members of the Association Board; (6) the Association's most recent annual report, if any; (7) copies of current contracts to which the Association is a party; (8) records of architectural approvals, if any; and (9) ballots, proxies and other records relating to voting by Members for one (1) year after the election, action or vote to which they pertain. The Association must also retain copies of all financial

statements and tax returns of the Association for a period of three (3) years. Notwithstanding the foregoing, the Developer shall be under no obligation to make its own books and records available for inspection by the Association, or any Owner, Member, or other Person.

- I. Association Rules. To adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate. However, prior to adopting, amending or repealing any Association Rules, the Association Board shall notify the Members of its intent and shall provide the text of the proposed Association Rule and the date on which the proposed Association Rule shall be considered. The Association Rules may not unreasonably or unlawfully discriminate among Owners and Members. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, or a notice setting forth the adoption, amendment or repeal of specific portions of the Association Rules shall be delivered to each Member in the same manner established in this declaration for the delivery of notice pursuant to Article XIV, Section 14.02 below. Upon completion of the notice requirements, the Association Rules shall have the same force and effect as if they were set forth in and were part of this Declaration and shall be binding on the Owners and Members, and all other Persons having any interest in, or making any use of, the Association, whether or not actually received thereby. After adopting, amending or repealing any Association Rule, the Association Board shall provide the Members with a copy of the text of the change. The Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Association to each Owner, Member, or other Person reasonably entitled thereto, upon request. In the event any conflict between any provision of the Association Rules and any provisions of this Declaration or the Association Articles or Association Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Association Articles or Association Bylaws to the extent of any such conflict.
- J. Enforcement. To perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of the Declaration, the Association Articles, the Association Bylaws, the Association Rules or Design Standards.

4.04 Association Membership, Meetings and Voting Rights.

- A. Each Owner shall be a Member of the Association, pursuant to Article I, Section 1.20 above. A membership in the Association shall be inseparable from the Lot to which it applies and may not be transferred separately from such Lot.
- B. The Members must meet at least annually at a time, date and place in accordance with the Association Bylaws. Special meetings of the Members may be held to

address any matter affecting the Association if the Association President, a Majority of the Association Board, or at least ten percent (10%) (or less than ten percent (10%), if set forth in the Association Bylaws) of the Members call such a meeting. If a special meeting has not been set within thirty (30) days, the parties requesting the special meeting may directly notify all of the non-requesting Members of the meeting. Notifications for both annual and special meetings shall be made at least ten (10) days and no more than sixty (60) days beforehand, and shall include: (1) statement of the general nature of any proposed revisions to the Declaration or the Association Bylaws; (2) any Association budget proposals or changes; and (3) any proposal to remove a member of the Board or an officer of the Association. Owners shall be given an opportunity to comment on matters pertaining to the Association during such meetings.

- C. Subject to the provisions of Article IV, Section 4.12 below, each Lot shall be entitled to only one (1) vote in the Association, the number of Owners notwithstanding. The percentage of votes necessary for decisions and actions of the Association shall be set forth in the Association Bylaws. When more than one Person owns a Lot, the vote for such Lot shall be exercised as they among themselves determine and they shall designate and register with the secretary of the Association the name of that Person entitled to cast such vote, but in no event shall more than one vote be cast with respect to any one Lot.

4.05 Board of Directors of the Association.

- A. The affairs of the Association shall be conducted by the Board as herein provided and in accordance with the Association Articles and Association Bylaws. Except for directors elected by Developer as provided for in Article IV, Section 4.12 below, each director shall be an Association Member.
- B. Any member of the Association Board may be removed from office, by action of the Members, in accordance with the following procedures: Upon the presentation to the Association President of a petition duly executed by thirty-four percent (34%) or more of all of the Members in favor of the removal from office of the member or members of the Board therein named, a special referendum meeting of the Members shall be promptly held to determine whether such member or members of the Board should be removed from office. Notice of such meeting shall be provided in accordance with the provisions set forth in Article XIV, Section 14.02 below, except that the proposal to remove such member or members of the Board must be listed as an item in the notice of such meeting. At said meeting, upon the affirmative vote of two-thirds (2/3) of all of the Members then-entitled to vote to remove such member or members of the Board from office, such member or members of the Board shall be so removed. However, the member or members of the Board being considered for removal must have a reasonable opportunity to speak at said meeting prior to the vote

of the Members. Any vacancy on the Board created by the removal of a member of the Board as herein provided shall be filled by an election of all of the Members in the manner provided in the Association Articles or Association Bylaws for the election of directors.

- C. Meetings of the Board must take place at least two (2) times per year during the period of the Developer's control as provided by Article IV, Section 4.12 below. One (1) such meeting must take place in the Community. Following the period of the Developer's control, the Board must meet at least annually. Each annual meeting must take place at the Association's principal office or at a location convenient for the Members. Meetings of the Association Board and its committees must be open to the Members except for executive sessions of the Association Board, which are limited to discussions involving: (1) consultation with the Association's attorney; (2) litigation or related alternative dispute resolution proceedings; (3) labor or personnel matters; (4) leases, commercial transactions or purchase if information released would compromise the Association's position; and (5) matters that would violate the privacy of any Person. The Board must meet at least annually, always at the Association's location or at a convenient place for Members. Unless the Board meeting is either an emergency or in a notice previously provided to all Members, the Board must notify the Members of a Board meeting at least five (5) days in advance of such meeting. Notice of a Board meeting shall include the time, date, place and agenda of such meeting. Copies of materials distributed to the Board except for unapproved minutes or materials for executive sessions shall be reasonably made available to Members.
- D. Notwithstanding the foregoing, the Association Board may not perform any of the following acts: (1) amend the Declaration, except as provided by law; (2) amend the Association Bylaws; (3) terminate the Association; (4) elect a member or members of the Association Board except to fill vacancies on such board until the next election of members to the Board; and (5) determine the Board's qualifications, powers, duties, or terms of office.

4.06 Duties and Powers of the Association President.

- A. To the extent not prohibited by law, or as otherwise herein expressly limited, the Association President shall be empowered to exercise control over the affairs of the Association and to act on behalf of, and bind, the Association in every instance wherein the Association is required or permitted to take any action.
- B. Notwithstanding anything in this Article IV, Section 4.06 to the contrary, the Association President shall not have the power to borrow any funds on behalf of the Association, make any expenditures on behalf of the Association which are, in the aggregate, more than five percent (5%) of the total amount of the Association's

budget, or increase the amount of or levy any Assessment, without the prior approval of the Association Board.

- 4.07 President's Determination Binding. In the event of any dispute or disagreement between any Owners, Association Members, or any other Person subject to this Declaration, relating to the Community, or any question of interpretation or application of the provisions of this Declaration, the Association Articles, Association Bylaws, any Association Rules or other rules of the Association, or any Design Standards, the determination thereof by the President shall be final and binding on each and all of such Owners, Association Members, or Persons. The President may, at his or her election, delegate the resolution of such dispute or disagreement to the Board or a committee appointed by the Association President.
- 4.08 Association Management. The Association shall have the authority to employ a manager or management company to assist the Association with its duties. Any manager or management company employed by the Association shall have such authority as the Board may so delegate.
- 4.09 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the DRC, and Developer (to the extent a claim may be brought against Developer by reason of its appointment, removal, or control over Board directors, officers, or DRC members) shall be indemnified by the Association, and every other person serving as an employee, or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement thereof to which such person may be a party, or in which such person may become involved, by reason of such person's being or having served in such capacity on behalf of the Association whether or not such person is a director, an officer, or a member of the DRC, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Board shall determine, in good faith, that such officer, director, member of the DRC or other Person, or Developer, did not act, fail to act, or refuse to act willfully, fraudulently, criminally or with gross negligence, in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled at law or otherwise.
- 4.10 Non-Liability of Officials. To the fullest extent permitted by law, neither Developer, the Association President, any directors or officers of the Association, any DRC member, nor any other Members or committees of the Association shall be liable to any Association Member or any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, or negligence, made in good faith and believed to be within the scope of his or her duties.

- 4.11 Mediation and Binding Arbitration. In the event of a dispute with the Association President's decision as elsewhere provided herein, between one or more of the Owners, Members, the Association or any other Persons subject to this Declaration, relating to any question of interpretation, or application of the provisions, of this Declaration, or any Association Rules unless otherwise agreed by all parties to the dispute or disagreement, the parties shall submit the dispute or disagreement to a mutually acceptable mediator or, if there is no mutually acceptable mediator, then to a mediator selected by the Association Board. If such mediator is unable to mediate the dispute or disagreement to the satisfaction of the parties involved, the dispute shall be submitted to binding arbitration through the American Arbitration Association under its rules and procedures then in effect for disputes or disagreements of such nature or, in the absence of any such standard rules or procedures, then under such rules and procedures as it designates. The costs of such mediation or arbitration shall be assessed against the parties to such process. Notwithstanding and in addition to the foregoing, disputes between any of the parties set forth above shall mandatorily be submitted to non-binding alternative dispute resolution (in the form of mediation as set forth above or otherwise) as a pre-requisite to filing a lawsuit.
- 4.12 Developer's Control of the Association. Notwithstanding anything in this Article IV or elsewhere in this Declaration to the contrary, Developer shall maintain absolute and exclusive control over the Association and the DRC, including appointment and removal of the Association President and all other officers of the Association, all directors of the Board, and all members of the DRC, until the earlier of the following: (i) at such time as Developer chooses to turn over the operation of the Association to the Association; (ii) at such time ninety-five percent (95%) or more of the Lots in the Community (as the Community exists from time to time) have been sold by Developer to third parties; or (iii) twenty (20) years from the date of the execution of this Declaration. Until such time, only Developer will be entitled to cast any votes with respect to the election and removal of Association officers or directors and members of the DRC, or any other matter requiring the vote or approval of Association or DRC members. Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of Developer's control and rights under this Article IV, Section 4.12 by written instrument without affecting any rights of control not relinquished.

Article V

Assessments, Creation of Lien, and Personal Obligation

- 5.01 Assessments in General. Each Owner (not including any mortgagee as long as it is not the Owner), by and at the time of acceptance of a deed or other conveyance of an interest in a Lot, is deemed to personally covenant and agree to pay the Association all Assessments then due and unpaid to the time of acquiring title and all such charges thereafter falling due under such Owner's ownership.
- 5.02 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the

Association shall be used: (i) to promote the health, safety, and welfare of Owners; (ii) to enhance the value of the Community; (iii) to pay the costs of administration of the Association; (iv) to pay all other Common Expenses; and/or (v) to otherwise further the interests of the Community.

5.03 Regular Assessments.

- A. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and at such times as may be determined by the Association.
- B. The Association shall create a budget for the each fiscal year, approved by the Board, estimating the total Common Expenses to be incurred by such Association for such fiscal year. The budget shall also set forth the amount of the Regular Assessments to be paid by each Owner. Initial Regular Assessments shall be One Hundred Seventy-five and No/100 Dollars (\$175.00) per month per Lot, subject to increases as provided in this Section 5.03. This assessment is in addition to the assessment levied by the Grand Mere Master Association.
- C. If the Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, the Association President shall then immediately determine the approximate amount of such inadequacy and, with the approval of the Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of the Regular Assessment to be paid by each Owner for the balance of the year, and the date or dates due. Each Owner shall be notified of the additional amount required to be paid and the due date of such payment, and each Owner shall pay the additional amount when due. If the total Regular Assessments for a current year exceed the actual Common Expenses, the Association may, at the discretion of the Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year.

5.04 Special Assessments. Special Assessments shall be levied by the Association against an Owner to reimburse the Association for:

- A. Costs incurred in bringing an Owner or the Owner's Lot into compliance with the provisions of this declaration, the Association Articles, Association Bylaws, or the Association Rules.
- B. Fines levied or fixed by the Association Board as provided herein.
- C. Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance with this

Declaration, the Association Articles or Association Bylaws, or the Association Rules.

- D. Any other charge designated as a Special Assessment in this Declaration, the Association Articles, Association Bylaws, or the Association Rules.

The Association Board may propose and adopt a Special Assessment at any time, but all Members must receive notice of such Special Assessment at least ten (10) days in advance of such proposed adoption. A copy of the proposal for such Special Assessment must also be available to any Member who requests it. Members must be given a reasonable opportunity to comment on the Special Assessment before the Association Board takes action to adopt a Special Assessment.

- 5.05 Exempt Property. All properties owned by Developer and all properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments provided herein.
- 5.06 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to an Owner upon the Owner's closing on a Lot, and shall be due on a semi-annual basis, payable to the Association in advance.
- 5.07 Time and Manner of Payment; Late Charges and Interest. If an Assessment is not paid within thirty (30) days after its due date, each such Assessment shall have added to it a late charge equal to ten percent (10%) of the amount of Assessment and thereafter bear interest, until payment of such Assessment, at the rate of eighteen percent (18%) per annum or at such other rate as may be established from time to time by the Association. The Board may, in its discretion, waive any late charge and/or interest in any instance without prejudice to other instances. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Association as a result of such delinquency.
- 5.08 No Offsets. All Assessments shall be payable in the amount specified in the Assessment or notice of Assessment and no offsets against such amount shall be permitted for any reason.
- 5.09 Reserves. The responsibility of the Board shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither Developer, the Board, nor any director thereof shall have any liability to the Association, any Owner, or Association Member, with regard to the adequacy of such reserves.
- 5.10 Lien for Delinquent Assessments. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as provided herein, shall be a continuing lien and encumbrance upon the Owner's Lot against which the Assessments are made as well as a personal obligation of the Lot's Owner. The personal

obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by him. If an Owner shall consist of more than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Lot shall be joint and several.

- 5.11 Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Lot, each Owner shall be held to vest in the Association the right and power to prosecute all suits legal and equitable or otherwise that may be necessary or advisable for the collection of such Assessment(s). The Association shall have the right to sue for and collect a reasonable sum to reimburse it for its attorneys' fees and other expenses reasonably incurred in enforcing the rights hereunder.
- 5.12 Enforcement of Lien. Any lien provided for in this Declaration may be foreclosed by the Association in any manner provided, or permitted, for the foreclosure of real property mortgages or homes association liens in the State of Kansas. In the event the Association seeks to enforce any lien provided for in this Declaration, the Association shall record an Affidavit of Nonpayment of Regular or Special Assessment in the Office of the Register of Deeds of Riley County, Kansas, stating: (i) the legal description of the property upon which the lien is claimed; (ii) the name(s) of the Owner(s) of said property last known to the Association; and (iii) the amount of the Regular or Special Assessment which is unpaid. The Association shall commence foreclosure proceedings within five (5) years of the date of recording of such an affidavit.
- 5.13 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration or documentation associated herewith, the benefit of any redemption, homestead, or exemption laws of the State of Kansas now in effect, or in effect from time to time hereafter.

Article VI **Insurance**

- 6.01. Required Insurance. Each Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the Townhouse Unit, excluding land, foundation and excavations. The minimum requirement for the required insurance amount will be at least equal to the value assigned to the Townhouse Unit by Riley County for tax assessment purposes. The Owner shall be entitled to such insurance proceeds, subject to the interests of any mortgage holder or lien holder, including, but not limited to, any rights or lien held by the Association. The Owner shall be required to repair, reconstruct or rebuild as otherwise provided in this Declaration. The deductible for such fire and extended coverage insurance shall not exceed one thousand dollars (\$1,000) for each Owner.
- 6.02 Proceeds of Insurance. The proceeds from insurance received by an insurance trustee shall

be used to repair, reconstruct or rebuild the Townhouse Units damaged or destroyed by fire or other insured casualty, unless all Owners and their first mortgagees agree in writing not to repair, reconstruct or rebuild.

- 6.03 Blanket Policy. The Board of Directors of the Association may direct and require the Association to obtain and maintain the insurance required by Section 6.01 of this Article VI under one blanket fire and extended coverage policy providing such insurance for all owners and first mortgagees of the Townhouse Units as their interests may appear. In the event such blanket policy is obtained, each Owner shall be furnished a memorandum of insurance coverage setting forth the essential coverages of the blanket policy. The cost of such blanket policy shall be a common expense to be paid as set forth herein. The Board of Directors of the Association shall have the exclusive authority to negotiate losses insured against under a blanket policy.
- 6.04 Owners' Additional Insurance. The acquisition of a blanket policy shall not prejudice the right of each Owner to insure his or her own Townhouse Unit under a separate policy of insurance provided the benefits thereunder are payable to the Association or its nominee as insurance trustee for the benefit of the Association and all Owners and their first mortgagees, as their interest may appear. Owners are authorized to purchase additional insurance at their own expense to cover personal property within the Townhouse Unit and liability insurance to cover accidents within his or her Townhouse Unit. It shall be the Owner's responsibility to purchase, at his or her own cost, such insurance as he or she deems appropriate for his or her own Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere, personal liability, general liability, and such other insurance which the Owner desires.
- 6.05 Repair or Reconstruction After Fire or Other Casualty.
- A. If in the event of damage to or destruction of the Community or any part thereof as a result of fire or other casualty the proceeds of any policy or policies of insurance insuring against such loss or damage and payable by reason thereof, shall be substantially sufficient in the opinion of the Association Board and/or Owner(s), as the case may be, to pay the cost of repair or restoration, estimated as hereinafter provided, then the Board and/or the Owner, as the case may be, shall arrange for the prompt repair and restoration of the Townhouse Units (but not including any equipment, fixtures, furnishings or personal property of the Owners as described in the following paragraph), and the Board and/or the Owners, as the case may be, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.
- B. Each Owner shall be responsible for the reconstruction, repair or replacement of all personal property located within the interior of his or her Townhouse Unit or on his

or her Lot, to the extent not covered by the insurance carried by the Board and including, but not by limitation, the following: furniture, furnishings, and all appliances located therein irrespective of whether such appliances are "built-in" to the Townhouse Unit. Each Owner shall also be responsible for the costs not otherwise covered by insurance carried by the Association of any reconstruction, repair, or replacement of any portion of the property necessitated by his negligence or misuse, or the negligence or misuse by his family, guests, tenants, agents, servants, employees or contractors. In the event damage to all or any part of the interior of a Owner's Townhouse Unit is not covered by insurance held by the Association for the benefit of such Owner, then such Owner shall begin reconstruction or repair of his Townhouse Unit within sixty (60) days after the date of such damage, subject to the right of the Association to supervise, approve, or disapprove such reconstruction or repair during the course thereof.

- C. In the event the property or the improvements thereon so damaged or destroyed are not insured against the peril causing the loss or damage, or the insurance proceeds shall not be substantially sufficient in the opinion of the Board of Directors to pay the cost of repair or restoration, estimated as hereinafter provided, the president or secretary of the Association shall within sixty (60) days following such damage or destruction, call a special meeting of all Owners. If at such meeting the owners, including contract sellers and first mortgagees, of all Townhouse Units shall vote, by written ballot, not to rebuild, reconstruct, or repair the damaged or destroyed portions of the properties, such portions of the property shall not be rebuilt, and the Association Board, as insurance trustee, shall pay the insurance proceeds to the owners of Townhouse Units, including contract sellers and first mortgagees, whose Townhouse Units would otherwise have been rebuilt, reconstructed, or repaired, as their interest in such insurance proceeds may appear.
- D. Notwithstanding anything in this Article VI to the contrary, if all Owners, including contract sellers and first mortgagees, agree in writing not to repair, reconstruct, or rebuild any damaged or destroyed portions of the properties prior to the commencement of any rebuilding, reconstruction, or repair, then the insurance proceeds shall be paid by the Association Board, as insurance trustee, to the owners, including contract sellers and first mortgagees, of the Townhouse Units damaged or destroyed, as their interests may appear.
- E. As soon as possible after the occurrence of a casualty which causes damage to any part of the properties (hereinafter referred to as the "Casualty"), the Board of Directors or the Owner, as the case may be, shall obtain reliable and detailed cost estimates of restoring that part of the damage caused by the Casualty to each Townhouse Unit which is or would be covered by insurance held by the Association without regard to the policy limits of such insurance (hereinafter referred to as the "Townhouse Unit Costs").

- F. If repair or restoration is to be made pursuant to this Section 6.05, all insurance proceeds available to the Association with respect to the Casualty shall be applied to the payment of the actual Townhouse Unit Costs. However, if such insurance proceeds are not sufficient to cover the actual costs, then each Owner of a damaged Townhouse Unit shall be assessed in an amount equal to his actual Townhouse Unit Costs less the proceeds of insurance paid or payable with respect to his Townhouse Unit. The amount of such assessment shall be paid by the Owner to the Association at the time a contract is entered into by the Association for such repair or reconstruction. If an Owner shall fail to pay his share of the costs at the time requested, no repair or reconstruction work shall be performed in or to that Townhouse Unit except such work as shall be deemed by the Board of Directors to be absolutely necessary for the safety, protection, and appearance of the other Owners until such share of the cost shall have been paid.
- G. Any reconstruction or repair of a Townhouse Unit building shall be substantially in accordance with the plans and specifications for the original building, or if not, then according to plans and specifications approved by the Developer or the Association Board, as the case may be.

Article VII

Architectural and Landscape Control

7.01 Design Review Committee. The Association shall have a standing Design Review Committee ("DRC") consisting of not less than three (3) nor more than five (5) Board directors as specified from time to time by Developer during periods in which Developer has the right to appoint the members of the DRC pursuant to Article IV, Section 4.12 above, and thereafter, by resolution of the Board, which shall also appoint members of the DRC. During the period of Developer's control as provided in said Section 4.12, the DRC shall act in an advisory capacity to Developer. The DRC shall be empowered to utilize professional consultants as may be approved by Developer or the Board, as the case may be.

7.02 Review Process.

- A. Construction, placement of landscaping, or improvement on any Lot (other than done by the Developer during the period of Developer's control as set forth in Article IV, Section 4.12) including but not limited to site preparation, excavation, grading, walls, fences, tree removal, etc. shall not commence until the proposed improvement plans for the dwelling house or other structure have been submitted and approved in a signed writing by Developer or the DRC, as the case may be. Review shall be coordinated with the required governmental approvals. Submission to the City for building permits or site plan approval shall not be made until final plans have been approved by Developer or the DRC, as the case may be. All submissions to

Developer or the DRC shall be made within the time periods established by, and in a format approved by, either Developer or the DRC, as the case may be. Generally, improvement plans will include, but are not limited to: (i) site plan including property lines, easements, and location of proposed dwelling house and sidewalks; (ii) floor plan(s) indicating wall lines and overall structure dimensions; (iii) window and door placement; (iv) roof and ground lines; (v) elevation views; (vi) exterior building material; and (vii) anticipated sales price.

- B. Developer or the DRC, as the case may be, shall act on the complete, proposed improvement plans submitted within thirty (30) working days after receipt, but not before five (5) working days after receipt. If Developer or the DRC, as the case may be, does not take any action within the specified time period, the plan(s) shall be deemed approved. Approval of the plans by Developer or the DRC, as the case may be, in no way abates or depletes compliance with or procurement of any approvals, permits, licenses, codes, or ordinances which may be required by the City, County, or the State of Kansas, now or in the future.
- C. Anyone having submitted plans for the DRC's approval may appeal the DRC's decision before the full Board, which, having granted such an appeal shall approve, overturn, or modify the DRC's decision. Procedures for such an appeal shall be set forth in the Association Rules.
- D. Notwithstanding anything in this Article VII, Section 7.02 to the contrary, Developer shall have sole discretion regarding deciding any architectural proposal submitted under this Article VII during the period that Developer has voting control of the Association and the DRC.

7.03 Interpretation and Waiver. The interests of Developer and the DRC, as the case may be, in reviewing site and building designs are to assure that a high quality of compatible development is consistently achieved. In order to meet special situations that may not be foreseen, it may be desirable from time to time for Developer or the DRC, as the case may be, to allow variances of certain requirements; such variances shall not be considered precedent setting. All approvals and consents of Developer or the DRC, as the case may be, shall be in writing, and oral approvals or consents shall be of no force or effect.

7.04 Developer/DRC Authority.

- A. No dwelling house, fence, wall, or any other structure, or improvement of whatever type shall be commenced, erected or maintained within the Community, nor shall there be any addition or change to the exterior of any residence or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, Patio Walls, patio covers and fences, except in

compliance with plans and specifications therefor which have been submitted to and approved by Developer or the DRC, as the case may be. Developer or the DRC, as the case may be, shall use discretion and reasonable judgment in evaluating and approving all proposed plans. Developer or the DRC, as the case may be, may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) low design quality; (iii) incompatible design elements; (iv) inappropriate design concepts or design treatment; and (v) a design found to have an adverse effect on the character of the Community or its residents. In recognition of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment that cannot be completely described in Design Standards, Developer or the DRC, as the case may be, shall also have the right to reject plans and specifications otherwise conforming to the Design Standards if Developer or the DRC finds that the overall aesthetic or other impact of any proposed improvement, addition, alteration, or change is detrimental to the Community.

- B. The Developer or its representatives, any member or authorized consultant of the DRC, or any authorized officer, director, employee or agent of the Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ensure that such improvements have been, or are being, built in compliance with the plans and specifications approved by the DRC, the Design Standards, and this Declaration.
- C. The Association may promulgate such Rules as it deems to be appropriate and as are not in conflict with this Declaration in order to enforce compliance with the Design Standards set forth herein. **WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ASSOCIATION BOARD MAY FIX FINES FOR FAILURE TO OBTAIN APPROVAL FROM THE DRC OR TO COMPLY WITH ANY SUCH APPROVAL.**

7.05 Developer/DRC Limits of Liability. By its approval of plans and specifications, Developer or the DRC, as the case may be, shall not be deemed to have warranted or approved the same for engineering design safety, or for compliance with zoning, health and building ordinances; by approving such plans and specifications neither the DRC, the members thereof, the Association, any of its Members, its officers, its Board nor the Developer or its designated representatives assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the DRC, any member thereof, the Association, any of its Members, its officers, its Board nor the Developer or its designated representatives shall be liable to any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of (i) the approval or disapproval of any plans, drawings, or specifications, whether or not defective; (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications; or (iii)

the development, or manner of development, of any property within the Community. Anyone submitting plans to Developer or the DRC, as the case may be, for approval and any other Owner agrees that he or she will not bring any action or suit to recover any damages against Developer or its designated representatives, the DRC or any member thereof, or the Association, any of its Members, its officers, or its Board.

- 7.06 Authorized Builder. Developer, or Developer's successors, heirs and assigns shall be the sole authorized builder for any Townhouse Unit to be erected upon any Lot in the Community. Notwithstanding the foregoing, Developer may authorize a third-party builder to erect a Townhouse Unit upon a Lot in the Community, but only with the express written permission of Developer, or Developer's successors, heirs and assigns, as the case may be.
- 7.07 Design Standards. The following design standards hereinafter set forth in this Article VII, Section 7.07 are hereby established for the Community.

A. Units.

1. Townhouse Units shall have a minimum total finished living area of not less than 1,650 square feet on the main floor if the Units are designed as slab on grade and not less than 1,400 square feet on the main floor if the Units are designed with a walkout basement. For purposes of the preceding sentence, the finished living area shall not include open porches, garages, or any area not attached to the main structure.
2. Townhouse Units shall be not less than twenty percent (20%) brick, stone, or cultured stone on the front exterior elevation. Vertical siding shall not be used on the front elevation.
3. Townhouse Units must be of "on site" or "stick built" construction.
4. Any reconstruction or repair of a Townhouse Unit building shall be substantially in accordance with the plans and specifications for the original building, or if not, then according to plans and specifications approved by the Developer or the Association Board, as the case may be.

B. Garages. Each Townhouse Unit must have a two (2)-car garage attached directly to the Townhouse Unit. Carports are prohibited.

C. Driveways. Driveways from Townhouse Units to garages shall be constructed of concrete or as otherwise allowed by Developer or the DRC, as the case may be.

D. Outbuildings. Outbuildings, shacks, or sheds on any Lot are prohibited.

- E. Exterior Materials and Paint. Boxing is required beneath all exterior materials used on any Townhouse Units or on any garage. Neither Masonite nor vinyl siding is permitted on a Townhouse Unit. All exterior paint on a Townhouse Unit shall be in the earth-tone category, as determined and approved by Developer or the DRC, as the case may be.
- F. Roofing Materials. All roofing materials for a Townhouse Unit shall be, at a minimum, thirty (30)-year asphalt architectural or dimensional style shingles.
- G. Construction, Location, and Size Limitations.
1. Structures shall not exceed one (1) story above the ground level. As such, Units shall have a main floor and may, but shall not be required to have, a walkout basement or other sub-level.
 2. No exterior alterations of any existing building or structure shall be permitted without the prior approval of Developer or the DRC, as the case may be.
 3. No excavation will be made except in conjunction with construction of an improvement. When such improvement is completed, all exposed openings will be back-filled and graded.
 4. A residence destroyed by fire or other casualty shall be removed from the Lot and new construction begun within three (3) months after the date of such destruction, and thereafter such construction shall be performed with due diligence through completion in accordance with Article VII, Section 7.07(A)(4) above. Such construction must be completed within one (1) year of commencing construction.
- H. Landscaping. Landscaping shall be reviewed for its overall appropriateness, as well as its sense of cohesiveness and thoughtful composition within the Community. Landscape plans shall be submitted to the DRC for review prior to planting. All areas of a Lot not occupied by a Townhouse Unit shall be sodded and irrigated except for certain natural areas containing Native Grass, or when matching adjacent conditions, where terrain and trees make this impractical. If a Member wishes to deviate from the landscaping plan utilized on a Lot by Developer, they shall make an application to the DRC as set forth in this Article VII.
- I. Sidewalks. Any and all sidewalks shall be five feet (5') wide unless otherwise approved by Developer or the DRC, as the case may be. There must be a sidewalk the entire length of the front yard of all Lots, and a sidewalk the entire length of the Lot for any Lot sides that are directly adjacent to a street.

- J. Fences or Walls. Fences and/or walls on any Lot are prohibited unless specifically authorized in advance by the Developer and/or the DRC, as the case may be. Fences are not encouraged because they fragment the landscape of the Community. In addition, all perimeter fencing, when approved by the DRC, shall be black and metal with an open picket style. Privacy screens of other materials may be permitted by the DRC around patios so long as the DRC determines that the materials and design are in harmony with the Townhouse Unit and the surrounding Community. Such privacy screens shall not be permitted to penetrate the building set back lines.
- K. Window Units. Window air conditioning or heating units are prohibited.
- L. Mailbox. There will be a central mail facility or cluster of mailboxes. Maintenance of the cluster mailbox facility shall be a Common Expense.
- M. Parking. No long term, outside parking of recreational vehicles, boats, campers, and similar items is allowed. All such vehicles shall be stored in a garage.

Article VIII
Covenants, Conditions and Restrictions for Maintenance

The maintenance requirements hereinafter set forth in this Article VIII are hereby established for the Community.

- 8.01 Lot and Dwelling Site Maintenance. Except with respect to common-area care and maintenance to be performed by the Association pursuant to Article VIII, Section 8.02 below, each Owner (other than Developer) shall keep the Lot owned by such Owner and all improvements thereon in good order, condition, and repair, including, but not limited to, the maintenance, repair, and replacement of all structures, buildings, and other improvements; roofs, gutters, down spouts, exterior building surfaces (other than painting and roofing of such surfaces), and other exterior improvements; any enclosed courtyards, decks, and the interior of the residence, including all appliances, heating and air conditioning equipment, and plumbing; exterior doors, windows, glass walks, chimney flues and structural items, patios, porches, steps, lawns, driveways and sidewalks appurtenant to such Lot, all in a manner and with such frequency as is consistent with good property management. Each Owner shall be responsible for routine sweeping and leaf removal from driveways, sidewalks, decks, and patios which are appurtenant to his or her Townhouse Unit. Each Owner shall be responsible for all manual weed pulling and/or crabgrass removal. Each Owner shall be responsible for treating driveways and sidewalks upon each Lot to ensure such areas are kept free from ice buildup. Each Owner shall be required to pay for monthly trash and refuse pick-up in accordance with Article VIII, Section 8.02(C) below. Each Owner's obligation hereunder shall commence upon the acquisition of such Owner's Lot.
- 8.02 Association Maintenance and Services. The Association shall be responsible for and shall

have an easement to perform certain maintenance on all Lots as described in this Section 8.02. All maintenance on a Lot not described in this Article VIII, Section 8.02 as specifically an Association Maintenance Responsibility shall remain a responsibility of the individual Lot Owner. Association Maintenance Responsibility includes the following:

- A. Yard Maintenance. The Association shall mow the grass planted on each Lot at intervals dependent upon seasonal requirements as determined in the sole discretion of the Developer or the Association's landscaping provider, as the case may be. The Association shall trim and maintain all trees, shrubs and plantings that were included in the original landscape plan for each Lot. The Association shall not, however, be obligated to maintain flower gardens, vegetable gardens, fruit trees, or shrubs, trees, plants, or similar items planted or established by an Owner and which, in the sole judgment of the Association, shall be determined to require the expenditure of Association funds for the benefit of only one Owner rather than the common benefit of all Owners. The Association shall fertilize the grass lawns of each Lot at least annually and based upon the recommendation of an experienced landscape company selected by the Association, in the Association's sole discretion, to complete such fertilization. The Association shall provide irrigation for each Lot in a quantity and frequency that is dependent upon seasonal requirements as determined in the sole discretion of the Developer or the Association's landscaping provider, as the case may be. Such irrigation shall be metered and administered separately from the water utility service to each Townhouse Unit. The Developer or the Association, as the case may be, shall also provide chemical weed control in all landscaping beds, as needed, as determined in the sole discretion of the Developer or the Association's landscaping provider, as the case may be. Trees, shrubs and plantings added by the Owner will be trimmed and maintained (watered, weeded, etc.) by the Owner. Failure to trim and maintain such Owner-added shrubs and plantings will result in the Developer or the Association, as the case may be, contracting such trimming and maintenance to a professional landscape service and an additional assessment to recover these expenses shall be deemed a Special Assessment unless paid by or on behalf of said Owner within thirty (30) days of the written demand therefor, and shall be enforceable and secured by a lien.
- B. Trash Pick-up. The Developer or the Association Board, as the case may be, shall determine the private contractor to be used for trash and refuse pick-up by all Owners. All Owners shall be required to use the same private contractor selected by the Developer or the Association Board for trash and refuse pick-up. Payments to the private contractor as specified by the Developer or the Association shall not be considered a part of any Regular or Special Assessment and shall be the sole responsibility of an Owner.
- C. Ice and Snow Removal. The Developer or the Association, as the case may be, may contract with the City or private contractors, as required, for the timely removal of

snow and ice from the common paved areas and private driveways of each Lot in the Community. The Developer's or the Association's, as the case may be, obligation to remove snow shall commence as determined in the sole discretion of the Developer or the Association's landscaping provider, as the case may be, but shall mandatorily occur when snow accumulates to an average of over two inches (2") in height.

- D. Painting and Roofing of Townhomes. The Association shall repaint the exterior of each Townhouse Unit (including the exterior siding, trim boards, soffit and fascia of each Townhouse Unit) every seven (7) years from the date that maintenance fees are first assessed for each Townhouse Unit, regardless of subsequent transfers and/or ownership of a Townhouse Unit. Other than as set forth above, repainting shall not commence for reasons of general repair, damage, paint peeling, and/or problems caused by severe weather and/or exposure of a Townhouse Unit's exterior to the elements. The Association shall re-roof each Townhouse Unit every thirty (30) years from the date that maintenance fees are first assessed for each Townhouse Unit, regardless of subsequent transfers and/or ownership of a Townhouse Unit. Other than as set forth above, re-roofing shall not commence for reasons of general repair, damage, issues related to shingles, and/or problems caused by severe weather and/or exposure of a Townhouse Unit's roof to the elements. No Owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of his or her Townhouse Unit or do any work which would jeopardize the soundness, attractiveness, or safety of the Townhouse Unit, reduce the value thereof, or impair any easement or hereditament without in every such case first obtaining the written consent of the Developer or the Association, as the case may be.

E. Easements.

1. Utility Easements. Developer will install, or cause to be installed, lines, pipes, conduits, members and other utility facilities referred to as "utility lines" for the purpose of providing such sewer, electricity, gas, water and telephone services to the individual Lots. To ensure that such utility lines shall be kept, maintained, restored, repaired and replaced, Developer hereby grants to the Association, its successors and assigns, and to the City and to any and all public utilities, for the benefit of the Lot Owners, the following permanent rights, licenses and easements:

- a. An easement to keep, maintain, restore, repair and replace any such utility lines over, under and across the Community or the Lots for the purpose of maintaining, restoring, repairing or replacing any utility lines, and for the purpose of reading any meter installed with respect to any utility line. This shall include, but not be limited to, an easement to allow utility service, access and repair to a Townhouse Unit that does not have an electrical meter, cable box or other utility

device attached to the Townhouse Unit, but has an electrical meter, cable device on the other Townhouse Unit that it shares a building with in accordance with Section 14.07 below.

- b. If, in order to maintain, restore, repair or replace the utility line that serves any one Lot, it becomes necessary to break through walls, excavate or otherwise damage a Lot or the Community the damages caused by such action shall be repaired and the Lot or the Community so damaged shall be restored to substantially the same condition as prior to such damage, as a Common Expense of the Association, payable out of the Regular Assessment; unless, however, the need for such maintenance, restoration, repair or replacement was caused through the willful or negligent act of an Owner, the Owner's family, guest or invitees, in which event the cost of such maintenance or repairs shall be added and become an additional Assessment to such Owner. Expenses applicable to removal of obstructions in a sewer line from the connection with a main by a private line to a Lot, however, shall be assumed and paid by the Owner of such Lot and shall not be a common expense payable by the Association out of the Regular Assessment.
 - c. If it becomes necessary to maintain, restore, repair or replace utility lines which serve more than one Lot, then the cost of such maintenance, restoration, repair or replacement to its former condition shall be a common expense payable by the Association out of the Regular Assessment.
2. Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the Lots for ingress and egress, installation, operation, replacing, repairing and maintaining utilities, including but not limited to, water, sewer, telephone, television, high speed internet cables, electricity, gas, for drainage facilities and floodway purposes, together with the right to remove any obstruction that may be placed in such easement area that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utilities, drainage and floodway courses.
3. Easement for Ingress and Egress. Developer hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, for the benefit of each Lot Owner, an easement for ingress and egress to each Lot over and across each Lot.
4. Association Easement. Developer hereby establishes and reserves to itself,

its successors and assigns, an easement over, under and across, the Community for the benefit of each Lot Owner, for the purposes of executing any of the powers, rights or terms of this Declaration, the Association Articles, or the Association Bylaws.

5. Party Wall Easement. A party wall easement is hereby established over that part of any Townhouse Unit in which any part of a common wall between Townhouse Units is constructed (including Patio Walls), together with the right to restore any such party wall, and such party wall may contain plumbing lines, vent stacks for plumbing and heating, electricity pipes and conduits and fireplace flues, serving improvements using such party wall. This party wall easement shall be a cross-easement in favor of each Townhouse Unit in which is located a common or party wall.
6. Party Wall Utility Easement. An easement for utility services is hereby reserved for the benefit of each Townhouse Unit, which is a part of a building which contains two (2) Townhouse Units joined together by a common or party wall, as dominant tenement, over, under, and through the properties and the other Townhouse Unit as the servient tenement.

8.03 Cost of Association Maintenance and Services. The cost of the Association Maintenance Responsibilities shall be added to and become part of the annual Regular Assessment to which the Lots will be subject under Article V above, and as part of such Regular Assessment, it shall be a lien and a personal obligation of the respective Owners and shall be due and payable in all respects as provided therein.

8.04 Enforcement. If in the opinion of Developer or the Association, as the case may be, any Owner fails to perform such duties or otherwise breaches such Owner's obligations as specified in this Article VIII, Developer or the Association, after fifteen (15) days' written notice to such Owner to remedy such default, shall have the right (in addition to any other rights and remedies available at law or at equity) but not a duty, through its agents and employees to enter upon the Lot(s) involved and to repair, maintain, repaint, remove, and restore such Lot(s) or such improvements or otherwise bring such Lot(s) or such improvement into conformity herewith and the cost thereof shall be a personal obligation of such Owner and a Special Assessment, which may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in accordance with Article V above, shall be levied against such Lot(s).

Article IX

Covenants, Conditions and Restrictions for Use and Occupancy

The use and occupancy restrictions hereinafter set forth in this Article IX are hereby established for the Community.

- 9.01 General. The use of a Lot which violates any laws or regulations of the City, the County or the State of Kansas shall not be permitted.
- 9.02 Master Declaration Covenants, Conditions and Restrictions. The Master Declaration's Covenants, Conditions and Restrictions are hereby fully incorporated into this Declaration and shall be deemed to be in full force and effect as if they were set forth in full herein. In the event of an inconsistency between this Declaration and the Master Declaration, the more restrictive covenants, conditions and restrictions for use and occupancy shall apply.
- 9.03 Swimming Pools/Hot Tubs. No above-ground or in-ground swimming pool or above-ground or in-ground hot tub shall be placed upon or installed in any Lot.
- 9.04 Holiday Lights. Holiday lights may be displayed from November 15 through January 30. Holiday lights must be taken down by January 30.
- 9.05 Yard Art or Sculpture; Lawn Ornaments. All forms of yard sculpture, "yard art," or lawn ornamentation must be approved by Developer or the DRC, as the case may be.
- 9.06 Flagpoles. Freestanding flagpoles are prohibited. Flagpoles attached to a Townhouse Unit that are over four feet (4') long are prohibited.
- 9.07 Outside Antennae and Satellite Dishes. Television or radio antennae are prohibited. The size and placement of satellite dishes must be approved by Developer or the DRC, as the case may be. Notwithstanding the foregoing, all satellite dishes must be ground-mounted in a landscaped portion of a Lot. Roof-mounted satellite dishes are prohibited.
- 9.08 Native Grass. Any and all Native Grass that shall be present upon any Lot shall not be disturbed or altered from such Native Grass' natural state, except as necessary to build the Unit, approved landscaping and driveways. No trees, bushes, shrubs or sod shall be permitted to be planted in the areas upon a Lot where Native Grass remains. Notwithstanding the foregoing, Owners are permitted and encouraged to remove trash, debris and clutter from the Native Grass on a regular basis to enhance the aesthetic appeal of the Native Grass and, correspondingly, the Community. In addition, Owners are permitted and encouraged to develop and carry out a maintenance plan for the Native Grass.
- 9.09 Personal Property and Children's Toys. Trampolines, swing sets, jungle gyms, play sets, playhouses, and similar personal property items shall be prohibited. The Developer and the Association shall have the discretion to not allow any such similar personal property items on any Lot. No personal property and/or children's toys, including, but not limited to, sports equipment, lawn games, bicycles, squirt guns, water balloons, skateboards, roller blades, roller skates, action figures, dolls and/or stuffed animals, shall be kept on any Lot so as to be

visible from another Lot for an unreasonable amount of time. This restriction is included not to discourage the presence of children or social activity in the Community, but to ensure that the aesthetics of the Community are not damaged or harmed by the unsightly accumulation of the aforementioned personal property and to allow landscaping contractors undisturbed access for purposes of Lot maintenance, as set forth in Article VIII, Section 8.02 above.

- 9.10 Propane Tanks. Propane tanks and/or tanks containing similar substances (e.g., natural gas, butane, etc.) that are installed on the exterior of any Townhouse Unit and/or located on any Lot shall be screened by a structure composed of masonry material that is similar to the masonry material located on the Townhouse Unit appurtenant to such tanks. Such propane tanks and/or tanks containing similar substances shall not exceed twenty-five (25) gallons in capacity. There shall be no more than two (2) propane tanks and/or tanks containing similar substances per Townhouse Unit. The installation and retention of all propane tanks and/or tanks containing similar substances, including the installation and design of any screen as described above, shall be subject to the inspection and approval of the Manhattan Department of Fire Services and must also be approved by Developer or the DRC, as the case may be.
- 9.11 Leasing. No Townhouse Unit and/or Lot shall be rented for transient purposes, or, without the prior written approval of the Association Board, for any period of less than twelve (12) months or to more than four (4) unrelated persons. No more than four (4) unrelated persons shall be entitled to reside in any leased Townhouse Unit. No Owner shall be entitled to rent his or her Townhouse Unit if he or she is delinquent in the payment of any assessment required by this Declaration. Any lease or rental agreement pertaining to a Townhouse Unit shall be approved by the Board prior to any lessee/tenant taking occupancy thereunder.

The Association Board may require standardized leases or rental agreements with respect to all Townhouse Units; provided, however, that the amount of rent shall not be subject to approval or standardization by the Board. All leases and/or rental agreements shall contain a provision to the effect that the rights of the lessee/tenant to use and occupy the Lot and/or Townhouse Unit shall be subject and subordinate to all respects to the provisions of the Master Declaration, this Declaration, the Association Bylaws, and to the Association Rules.

- 9.12 Basketball Goals. Any basketball goals shall be free standing, and not attached to the Unit.
- 9.13 Signs. No sign of any kind shall be displayed to the public view, or from any lot, or any Common Area, without approval of the DRC, except for the following temporary signs:
- A. Such signs as may be used by the Developer in connection with the development and sale of lots.
 - B. Such signs as may be required by legal proceedings, or the prohibition of which is precluded by law.

- C. Such signs as may be required for traffic control.
- D. Such signs advertising a lot as being for sale, except that sign must be located only on the lot to be sold, no real estate signs shall be placed in the Common Area, and only one real estate for sale sign shall be placed on a lot.
- E. Signs promoting political candidates, but only 30 days before and 5 days after the day of election.
- F. Signs identifying the general contractor associated with the home construction. Only one sign per lot is allowed, and it shall not exceed 5 square feet in total area, or be more than 3 feet in height.
- G. The Developer or Community Association has the right to remove any sign that violates these sign conditions, and to remove signs erected on the right-of-way, within the travel easements, on Common Area, or on private property.

Article X **Remedies**

- 10.01 **General Remedies.** If any Person(s) within the Community shall violate, attempt to violate or default upon any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions contained herein or in the Master Declaration, it shall be lawful for Developer, any Owner, the Association, the Master Association, or any other Person owning any of the aforesaid Lots, to prosecute, together or separately, any proceeding at law or in equity against the Person(s) violating or attempting to violate such covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions for the purpose to either prevent such Person(s) from doing so or to recover damages for such violation(s). Any Person authorized under this Article X, Section 10.01 may prosecute such violations or attempted violations for injunctive relief, for enforcement or foreclosure of any lien herein provided, for damages, for specific performance, for judgment for payment of money and collection thereof, or for any combination of remedies.
- 10.02 **Association Remedies.** In addition to the remedies available in Article X, Section 10.01 above and set forth in the Master Declaration, if any Person(s) within the Community shall violate or attempt to violate any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, or other provisions contained herein, it shall be lawful for Developer, the Association or the Master Association as the case may be, within reason, to suspend Association and/or Master Association services and privileges with respect to such Person(s) and/or to impose fines against such Person(s). Any fines so imposed shall be a personal obligation of and shall be charged to and assessed against such Person(s) violating or attempting to violate the provisions of this Declaration and/or the Master Declaration as a Special Assessment and shall be subject to Article V above.
- 10.03 **Legal Action.** In addition to any other remedies available under this Article X, but subject to the alternative dispute resolution provisions provided in Article IV, Section 4.11 above, if any Owner (either by Owner's conduct or by the conduct of any Occupant of such Owner's

Lot or family member, guest, invitee, or agent of such Owner) shall violate any of the provisions of this Declaration, the Master Declaration or any other document contemplated hereby, as then in effect, then the Association, the Master Association, the Developer, or any affected or aggrieved Owner, shall have the power to file an action against the defaulting Owner for a judgment, or injunction against the Owner or such other Person requiring the defaulting Owner or any other Person to comply with the provisions of this Declaration, or any other document contemplated hereby, and granting other appropriate relief, including money damages. Further, in the event judicial proceedings concerning the Association unrelated to enforcement of the Declaration, the Association Articles, Association Bylaws or Association Rules, the Association shall promptly provide notice to the Members of such proceedings.

- 10.04 Expenses of Enforcement. Any Person authorized under this Article X to prosecute violations or attempted violations shall have the right to include in such Person's claim for relief a reasonable sum to reimburse such Person for the court costs, attorneys' fees, and other expenses reasonably incurred in enforcing the rights hereunder. All expenses of Developer, the Master Association or the Association incurred by exercising the enforcement rights of this Article, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest therein until paid at the judgment rate of interest, shall be charged to and assessed against such Owner or other Person in violation of or attempting to violate the provisions of this Declaration, and shall be a Special Assessment against such Owner or other Person, and the Association and/or the Master Association shall have a lien as provided in this Declaration. Failure by any Person authorized under this Article X, Section 10.04 to enforce any covenant, condition, restriction, lien, assessment, privilege, right, or other provision herein shall in no event be deemed a waiver of the right to do so thereafter.
- 10.05 Limitation of Remedies. Notwithstanding the provisions of this Article X, the Master Association and the Association, by and through the Association Board or otherwise, shall not have the power to: (1) deny any Owner access to his or her Lot; (2) suspend any Owner's right to vote for Association purposes, except on financial issues; and (3) withhold services from any Owner that would endanger such Owner's health and/or safety.

Article XI

Term and Amendment

- 11.01 Covenants Running with the Land. The covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions of this Declaration shall run with the land and shall be binding upon all parties hereto and on all Persons claiming under them for the period of twenty (20) years from the date this Declaration is recorded in the Office of the Register of Deeds of Riley County, Kansas, after which time the said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions shall be automatically extended for successive periods of ten (10) years unless an instrument

signed by three-fourths (3/4) of the then Owners of the Lots has been recorded agreeing to change said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions of this Declaration in the whole or in part, it being understood that an Owner, with the exception of Developer, shall be entitled to cast as many votes as he or she may own Lots in said Community.

- 11.02 Amendment by Developer. Amendments to this Declaration made prior to the date that Developer turns over operation to the Association shall become effective when approved in writing by Developer and recorded in the Office of the Register of Deeds of Riley County, Kansas; provided, however, that such amendment shall not materially affect the right of any then existing mortgage holder or Owner. Developer reserves the right to correct errors that would prevent the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein from running with the land, and any such amendments shall not be construed as materially affecting the right of any then existing mortgage holder or Owner.
- 11.03 Amendments. Amendments to this Declaration other than those provided in Article XI, Section 11.02 shall be proposed in the following manner:
- A. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.
 - B. A resolution adopting a proposed amendment may be proposed by any Owner and may be adopted by a majority vote of the Members of the Association.
 - C. A copy of each amendment shall be filed of record with the Office of the Register of Deeds of Riley County, Kansas.

Article XII

Annexation of Additional Property

- 12.01 Development of the Project. Additional Property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article XII at such time as Developer or Master Association may elect, without the consent or assent of the Association.
- 12.02 Requirements. Additional Property annexed under this Article XII must be contiguous to the existing Community and must be encumbered with this Declaration simultaneously with the acquisition of the land. Such Additional Property shall be so encumbered by way and to the extent of a Supplemental Declaration.
- 12.03 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes Additional Property to this Declaration and which incorporates by

reference all of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights and other provisions of this Declaration. Notwithstanding the foregoing sentence, Supplemental Declarations may contain such additions and modifications of said covenants, conditions, restrictions, liens, assessments, easements, privileges, rights and other provisions, with respect to the Additional Property, as may be determined by Developer in its sole discretion.

- 12.04 Annexation without Approval of the Master Association. If added at the election of the Developer, the Additional Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Master Association without the approval, assent, or vote of the Master Association or any other common interest ownership organization or the members of either, or any Owner, provided that a Supplemental Declaration covering the Additional Property shall be recorded by the Developer. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the Additional Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdictions of the Master Association, and thereafter said Additional Property shall be part of the Community for all intents and purposes of this Declaration and all of the Owners in accordance with the terms hereof.

Article XIII

Exemption of Developer from Restrictions

Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Developer, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale, or leasing of the Lots, or any part of the property owned by Developer.

Article XIV

General Provisions

- 14.01 Severability. The invalidation, by judgment of court order, of any of the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein, shall in no way affect any other provisions, which shall remain in full force and effect.
- 14.02 Notice. Notices provided for in this Declaration, the Association Bylaws, or the Association Rules, shall be in writing and shall be addressed to the Association at the address specified in the Association Bylaws. The Association may designate a different address or addresses for notice by giving written notice of such change of address to all Members at such time. All notices to Members shall be to the last mailing address and/or electronic mail address of a Member designated by such Member and shown on the records of the Association. In the

absence of such a designation by a Member, notice may be given by hand delivery, U.S. Mail or commercial delivery service, electronically, or any other method reasonably calculated to provide notice to such Member. Any Member may designate a different address or addresses for notice to it by giving written notice of its change of address to the Association. Notices addressed as set forth above shall be deemed delivered when mailed by United States registered or certified mail or when delivered in person with written acknowledgment thereof. In the interest of establishing a reasonable method of communication between the Association and the Members, or between Members, the Association shall provide the designated mailing address and/or electronic mail address of all Members to any Member who shall request such information.

- 14.03 Captions and Exhibits; Construction. Captions are given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community as hereinabove set forth.
- 14.04 Rule Against Perpetuities. If any of the options, easements, privileges, covenants or rights created by this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue until twenty-one (21) years after the death of the last survivor of the now living descendants of Andrew W. Carson.
- 14.05 Board of Directors May Act for Owners. Whenever in this Declaration or the Association Bylaws, the Association Board or the members thereof are authorized or directed to acquire, hold, lease, mortgage, or convey any part of or interest in the properties, or to acquire any lien thereon, or to acquire or receive the proceeds to any policy of insurance or other monies, goods, or chattels, with respect to the properties, such action shall be carried out in the names of the members of the Board and their successors in office from time to time, as trustees, on behalf of some or all of the Owners, as the case may be.
- 14.06 Power of Attorney of Board of Directors. Each Owner, by accepting title to a Townhouse Unit, thereby grants to the persons who shall from time to time constitute the Association Board, but subject to the terms and provisions of this Declaration, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any lot and the Townhouse Unit thereon whose owner desires to surrender, sell, or lease the same, or which may be subject of a foreclosure or other judicial sale, in the name of the Board or its designee, corporate or otherwise, on behalf of all Owners, and to convey, sell, lease, sublease, mortgage, or otherwise deal with any such Townhouse Unit so acquired or leased.
- 14.07 Electric, Gas, Sewer, and Water Services. Electric, gas, water, and sewer services shall be supplied by the public utility companies serving the area directly to each Townhouse Unit

through a separate meter, and each Owner shall be required to pay the bills for electricity, gas, water, and sewer services consumed, used, or provided in or to his Townhouse Unit. The separate electric meter for each Townhouse Unit will both be placed on only one side of the building containing two (2) Townhouse Units to allow for fewer ground transformers (i.e., the large, green utility boxes) and extension pedestals (i.e., the gray utility pedestals), which will improve the appearance of the Community. Electricity, gas, water, and sewers serving all of the Lots shall be separately metered and shall be a Common Expense.

- 14.08 Construction. Whenever the context so permits, the use of plural shall include the singular, the singular plural, and the use of any gender shall be deemed to include all genders.
- 14.09 Condemnation of Townhouse Units. In the event that all of any part of the Townhouse Units or other property not owned by the Association shall be taken by condemnation or the exercise of the power of eminent domain, the Owners shall be free to assert their respective claims against the condemning authority, including any claims for severance damage, and to be entitled to the proceeds which are properly allocable to the respective Townhouse Unit taken or condemned. Nothing contained herein shall be construed as giving any Owner priority over any rights of mortgagees in case of distribution of a condemnation award to any Owner.

Article XV **Party Walls**

- 15.01 General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Townhouse Unit on each Lot and then placed on the dividing line between two Townhouse Units/Lots, as well as each wall/screen/divider that separates and demarcates each patio of a Townhouse Unit (such walls are referred to in this Declaration as "Patio Walls"), shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 15.02 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of such wall.
- 15.03 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, other than by the willful act or negligence of an Owner of a Townhouse Unit that is adjacent to a party wall, each of the Owners of the Townhouse Units that are adjacent to each party wall shall bear an equal share of the expense to repair or rebuild the party wall. If an Owner of a Townhouse Unit that is adjacent to a party wall or his guests, tenants, lessees, invitees, or licensees shall willfully or negligently cause damage to or destruction of a party wall, such Owner shall bear the entire cost of repair or reconstruction thereof.
- 15.04 Weatherproofing. An Owner who by his negligent or willful act causes the party wall to be

damaged or exposed to the elements (except for necessary exposure to the elements for Patio Walls) shall be assessed for the entire cost of furnishing the necessary repair or protection against such elements.

Article XVI
Rights and Obligations


Each grantee of the Developer or of any Owner, by the acceptance of a deed of conveyance and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each person acquiring a membership in the Master Association or the Association, and the heirs, successors, and assigns of the foregoing, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, powers created or reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, and reserved by this Declaration, and all rights, benefits, and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of any such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract, or instrument evidencing or creating such interest.

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**Signature Page
The Carson Company
Declaration of Easements, Covenants, Conditions and Restriction**

IN WITNESS WHEREOF, Developer has executed this Declaration this 29th day of December, 2017.

THE CARSON COMPANY,
a Kansas corporation

By: 
Andrew W. Carson, President

DEVELOPER

ACKNOWLEDGMENT

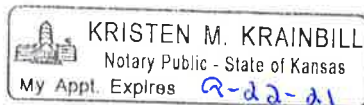
State of KANSAS, County of RILEY, ss:

BE IT REMEMBERED on this 29th day of December, 2017, before me the undersigned, a notary public in and for the county and state aforesaid, came Andrew W. Carson, President of The Carson Company, a Kansas corporation, said person being known to me to be the same person who executed the above instrument and acknowledged the same to be his voluntary act and deed for and on behalf of said corporation, as Developer.

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


Notary Public Kristen M. Krainbill

My appointment expires:



**Signature Page
Approval of the Master Association
Declaration of Easements, Covenants, Conditions and Restriction**

IN WITNESS WHEREOF, the foregoing Declaration of Easements, Covenants, Conditions and Restrictions are hereby approved by the Master Association in accordance with the Master Declaration on this 29th day of December, 2017.

**GRAND MERE PROPERTY
RESIDENTIAL DISTRICT MASTER
ASSOCIATION**, a Kansas corporation not organized for profit

By: Richard Gallagher
Richard Gallagher, President

MASTER ASSOCIATION

ACKNOWLEDGMENT

STATE OF Kansas, COUNTY OF Riley, SS:

BE IT REMEMBERED on this 29th day of December, 2017, before me the undersigned, a notary public in and for the county and state aforesaid, came Richard Gallagher, President of Grand Mere Property Residential District Master Association, a Kansas corporation not organized for profit, said person being known to me to be the same person who executed the above instrument and acknowledged the same to be his voluntary act and deed for and on behalf of said corporation, as Master Association.

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

Kristen M. Krainbill
Notary Public Kristen M. Krainbill



My appointment expires: