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Return to:  
Deron A. Anliker  
11040 Oakmont  
Overland Park, Kansas 66210

**DECLARATION  
OF  
EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
CRYSTAL RIDGE TOWNHOMES  
A SUBDIVISION  
IN THE CITY OF KANSAS CITY  
WYANDOTTE COUNTY, KANSAS**

**DECLARATION OF COVENANTS, RESTRICTIONS, ASSESSMENTS AND  
EASEMENTS FOR CRYSTAL RIDGE TOWNHOMES**

This is the Declaration of Covenants, Restrictions, Assessments and Easements for the Crystal Ridge Townhomes are made as of the 22<sup>nd</sup> day of August, 2003, pursuant to the provisions of K.S.A. §§ 58-3701 *et seq.* (the "Townhome Act").

**Recitals**

A. Crystal Mountain, LLC, a Kansas limited liability company, and Crystal Fountain, LLC, a Kansas limited liability company (collectively "Declarant"), are the owners in fee simple all of the real property hereinafter described as the "Townhome Property" and the improvements thereon and appurtenances thereto. The "Townhome Property" is described on Exhibit A according to the Final Plat of Crystal Ridge Subdivision.

B. The Declarant desires to create of this property a site of townhome units and commonly owned areas and facilities, and to these ends to submit this property to the provisions of the Townhome Act.

**Definitions**

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

"Articles" and "Articles of Incorporation" mean the articles of incorporation, filed with the Secretary of State of Kansas, incorporating Crystal Ridge Townhomes Association as a Kansas not for profit corporation, as amended from time to time.

"Additional Common Areas" means all areas and facilities designated in Exhibit C for which the Association shall share maintenance responsibilities with the associations governing the single-family and duplex areas.

"Association" and "Crystal Ridge Townhomes Association" mean the entity created by the filing of the Articles and is also one and the same as the association required for the Townhome under the Townhome Act.

"Board" and "Board of Directors" mean those persons who, as a group, serve as the Board of Directors of the Association.

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

"City" means the Unified Government of Wyandotte County, Kansas City, Kansas.

"Common Areas" means all of the Townhome Property, except each portion described in this Declaration as constituting a Unit or Units, and is that portion of the Townhome Property constituting "common areas and facilities" of the Townhome under the Townhome Act and which are to be owned in fee simple by the Association, as further described in Article VI, Section 1. The Common Areas are described as follows:

Tracts \_\_, \_\_, and \_\_, Crystal Ridge, a subdivision in the City of Kansas City, Wyandotte County, Kansas, according to the CRYSTAL RIDGE FIRST FINAL PLAT.

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

**"Declarant"** means Crystal Mountain, LLC, and Kansas limited liability company, and Crystal Fountain, LLC, a Kansas limited liability company, and its successors and assigns.

**"Declaration"** means this instrument, by which the Townhome Property is hereby submitted to the provisions of the Townhome Act and the Townhome Property is subjected to the covenants, restrictions, assessments and easements set forth herein.

**"Lot"** means any lot as shown as a separate lot on any recorded plat or replat of all or part of the Townhome Property upon which a townhome residence has been or will be constructed.

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

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

**"Plats"** means the plats, plats of survey or replats of various parts of the Townhome Property filed from time to time with the Register of Deeds of Wyandotte County, Kansas, as required or permitted by the Townhome Act.

**"Private Streets"** means all streets and roadways within the Townhome Property that are private streets for the use of all residents and guests of the Townhome Property and not dedicated as public streets to the City, and any entry gates situated upon or adjacent to such private streets.

**"Restricted Area"** means that area of any Lot which is located within any Landscape Easement designated on the Plat and includes those areas set forth in Exhibit B.

**"Restricted Area Improvements"** is defined in Article VI, Section 4.

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

**"Townhome Act"** means K.S.A. §§ 58-3701, *et seq.*, which is commonly known as the Kansas Townhouse Ownership Act.

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

**"Townhome Property"** means the tract of land hereinafter described as being submitted to the Townhome Act, all buildings, structures and improvements situated hereon, and all easements, rights and appurtenances belonging thereto. The Townhome Property is legally described in Exhibit A attached hereto.

**"Turnover Date"** means the earlier of (i) the date as of which 75% of all of the Units (as then composed or contemplated by the Declarant) have been deeded to Unit Owners delivered by the Declarant, or (ii) August 30, 2013.

"Unit" means collectively (i) one of the two separate residential units contained in a duplex that will be, is being or has been constructed on any lot, and (ii) the portion of the Lot that is allocated to such unit. Should a single family unattached residential unit be constructed on a Lot, such residential unit shall be deemed a "Unit" for purposes of this Declaration.

### The Plan

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

## ARTICLE I

### THE LAND

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

## ARTICLE II

### NAME

The name by which the Townhome shall be known is "Crystal Ridge Duplexes".

## ARTICLE III

### PURPOSES, RESTRICTIONS

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

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

(a) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental hereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in

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

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

(c) Visible Areas.

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

(ii) No awning, canopy, shutter, or any other device or ornament, shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or the Declarant.

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

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

(v) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.

(vi) No lights or other illumination (other than street lights) shall be higher than the residence. Exterior holiday lights shall be permitted only between Thanksgiving and New Year's Day. Except for such holiday lights, all exterior lighting shall be white and not colored.

(vii) No shed, barn, detached greenhouse or outbuilding, basketball court, animal run, trampoline, tree house or batting cage or clothesline shall be erected upon, moved onto or maintained upon any Lot. Any animal house must be located within the fenced-in patio area of the Unit.

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

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

(e) Garage and Vehicles.

(i) Garage doors shall remain closed at all times except when necessary.

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

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

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

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

(A) Storing in an enclosed garage;

(B) Temporary parking for the purpose of loading and unloading (maximum of one overnight every 14 days); or

(C) With prior written approval of the Board.

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

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

(g) Signs. Except for a professionally prepared For Sale or For Rent sign, not exceeding 5 square feet, no yard signs, banners, or other signs are permitted without the Association's prior approval. All signs permitted by the Association shall be maintained in good condition and repair, with a neat and orderly appearance, and shall comply with the applicable ordinances of the City. Without limiting the foregoing, no sign shall be permitted which (i) describes the condition of the residence or the Lot, (ii) describes, maligns, or refers to the reputation, character or building practices of Declarant, any Builder, or any other Owner, or (iii) discourages or otherwise impacts or attempts to impact a party's decision to acquire a Lot in the Addition. In the event of a violation of the foregoing provisions, Declarant or the Association shall be entitled to remove any such offending sign, and in so doing, shall not be subjected to any liability for trespass or otherwise.

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

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

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

water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

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

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

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

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

(o) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may, from time to time,



adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit owners, as a whole, and the Association, and to protect and preserve the nature of the Townhome and the Townhome Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

#### ARTICLE IV

##### IMPROVEMENT DESCRIPTIONS

**Section 1. Residential Buildings.** There will be up to 175 Units as part of the Townhome Property. The residential buildings are of traditional architectural style, of one or two stories, with basements and two car garages. These buildings are of wood frame construction, with brick, stone or stucco and wood siding, and composition shingle roofs. The principal materials of which these buildings are constructed are wood, glass, concrete, brick, composition shingle, and drywall. The residential buildings and Units are and will be located as shown on the Plats.

**Section 2. Other.** Each Unit will have a private exterior entrance and a driveway immediately in front of the attached garage which is part of that Unit. The Common Areas will include a walking trail, playground, and gazebo. In addition, the Common Areas will include, entry monuments and green and landscaped areas. Declarant shall have the right to add and designate additional Common Areas from time to time in its discretion.

#### ARTICLE V

##### UNITS

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

##### **Section 2. Composition of Units.**

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

(1) the portion of the building and improvements located within the boundaries of the Lot;

(2) all fixtures and appliances installed for the exclusive use of that Unit, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, gas furnaces, hot water heaters, heat pumps, and/or air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any;

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

(4) The driveway, lawn, and landscaping within the Lot boundary.

(b) Unit Types, Sizes, Locations and Components. The minimum habitable floor area for one townhome shall range from 900 to 1,300 square feet. All Units are of the general categories or types described on the attached Exhibit D, which also sets forth the general composition of each type of Unit. The category or type of each Unit built will be shown on Exhibit E, as amended from time to time by the Declarant. Each Unit has its own gas furnace, hot water heater, and fireplace. Each Unit has direct access to a public street.

Section 3. Party Walls. Each wall which is built as a part of the original construction of the Units upon the Townhome Property and placed on the dividing line between two Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence and willful acts or omissions shall apply thereto.

(a) The reasonable repair and maintenance of a party wall not covered by insurance shall be shared by the Unit owners who make use of the wall in proportion to such use.

(b) Notwithstanding any other provision of this Declaration, any Unit owner who by his, her or its negligence or willful act causes the party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(c) The right of any Unit owner to contribution from any other Unit owner with respect to the obligations relating to party walls shall be considered an appurtenant right and pass to any and all successors in interest to the title of such Unit.

(d) The boundary line between Units which share a party wall is and shall be deemed to be the center line of the wall regardless of the actual location of the platted boundary line.

## ARTICLE VI

### COMMON AREAS

Section 1. Common Areas - Description. All of the Townhome Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described in this Declaration or on the Plats as a part of a Unit, are Common Areas.

Section 2. Undivided Interest in Common Areas. The Common Areas shall be owned by the Association, but each Unit shall be deemed to have an undivided interest in the Common Areas and in the "common expenses" as allocated among all of the Completed Units on an equal basis per Completed Unit. No Unit owner may waive or release any rights in the Common Areas or any liability for common expenses. Further, the rights in the Common Areas shall not be separated from the Unit to which it appertains.

Section 3. Fences, Walls, Sprinkler Systems and Other Improvements in the Restricted Area. The Association shall have the right, but not the obligation, to use the Restricted Area for any purpose set forth in this Declaration, including, without limitation, for

ingress and egress, and for installing, replacing, repairing, relocating and maintaining cable television systems, master television antenna systems, security and similar systems; roads, walkways, sidewalks, bicycle pathways; entry monuments and fences (collectively, "Restricted Area Improvements"), as well as trees, bushes, landscape irrigation systems, berms, or any other materials or items related to landscaping; lakes, ponds, drainage systems; street lights, and utilities, including, but not limited to water, sewers, meter boxes, mail boxes, telephones, gas, and electricity, and to enter upon, install, construct, relocate, and remove all such items. No fence, landscaping (other than sod), wall or sprinkler system shall be erected in the Restricted Area by the Owner of the affected Unit without the prior written consent of the Association.

## ARTICLE VII

### HOMEOWNERS ASSOCIATION

Section 1. Establishment of Association. Commencing on the date hereof and continuing until the Turnover Date, the Declarant shall have the sole right, but not the obligation; to create the Association; thereafter, if not previously formed by the Declarant, the Association may be formed if the owners representing at least seventy-five percent (75%) of all Units consent to the creation of the Association.

Section 2. The Declarant shall have no responsibility or liability for (i) the creation, formation, management or operation of the Association, (ii) any actions taken or omitted to be taken by or on behalf of the Association as a result of, in connection with, under or pursuant to this Declaration, or (iii) any liabilities, obligations, debts, actions, causes of action, claims, suits or damages incurred by or on behalf of or arising in connection with the Association or the duties and obligations of the Association pursuant to this Declaration.

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

Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of ownership of a Unit shall automatically transfer membership to the transferee.

Subject to the foregoing, the Association shall be the sole judge of the qualifications of each Unit owner to vote and their rights to participate in its meetings and proceedings.

The Board, from time to time, may suspend the right of a member to vote with respect to his, her, or its Unit for failure to pay assessments when due, or for failure to observe other of the terms of the Townhome Instruments pursuant to rules and regulations duly adopted by the Board from time to time.

**Section 3. Board of Directors.** The Board initially shall be the one or more persons named as the initial Director(s) pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. As soon as possible after the Turnover Date, the Association shall hold a meeting of its members, and all Unit owners shall elect three Directors to replace all of those Directors earlier elected or designated by Declarant. The terms of the three Directors shall be staggered so that the terms of two of the Directors will expire and successors will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the two Directors whose terms then expire shall be elected to serve two-year terms. Notwithstanding the foregoing, after the Turnover Date the members, by the vote of members exercising not less than a majority of the voting power of members, may, from time to time, change the number and terms of Directors, provided, that in any such event the terms of at least two of the Directors shall expire annually.

Notwithstanding the foregoing, Declarant shall have the right at any time to waive its right to select one or more Directors or to vote in an election of Directors.

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

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

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

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance

with respect to the activities of the Association, the Common Areas and the property within the Townhome Property.

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

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

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

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

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

(i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Townhome Property; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Townhome Property neat in appearance and in good order.

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

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

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

**Section 5. Delegation of Authority; Management Contracts.** The Board may delegate all or any portion of its authority to a managing agent, which may be the Declarant or an affiliate of the Declarant. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause and without penalty, on not more than ninety (90) days' written notice, shall not exceed one year unless renewed by agreement of the parties for successive one-year

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

Section 6. Control of Association by Declarant. Notwithstanding anything in this Article VII or elsewhere in this Declaration to the contrary, Declarant shall have and maintain absolute and exclusive control of the Association and the Architectural Committee, including appointment and removal in Declarant's sole discretion of all officers of the Association, members of the Board of Directors and all members of the Architectural Committee, until the date (the "Turnover Date") which is the earlier of (a) the expiration of 10 years from the date of recording of the most recent plat affecting the Addition, or (b) the effective date designated by Declarant in a notice to the members of the Association stating that Declarant relinquishes control. Until the Turnover Date, Declarant will be entitled to cast all votes with respect to the election and removal of all officers of the Association, the Board of Directors, and members of the Architectural Committee and with respect to any other matter requiring the vote or approval of members of the Association or the Architectural Committee as set forth herein or in the Association's Articles of Incorporation or Bylaws. Notwithstanding the foregoing, or any other provision to the contrary set forth in this Declaration, if at the occurrence of the Turnover Date, Declarant continues to own any Lots in the Addition, then so long thereafter as Declarant continues to own Lots in the Addition, Declarant shall have the sole and exclusive authority to appoint all of the members of the Architectural Committee.

## ARTICLE VIII

### MAINTENANCE AND REPAIR; ASSOCIATION OBLIGATIONS

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

- (a) maintain, repair and replace all improvements constituting a part of the Common Areas, trunk and branch utility lines, and common sewer lines;
- (b) levy and collect the assessments and charges provided for in this Declaration.
- (c) clean catch basins, storm sewers and drainage facilities which are part of the Common Areas.
- (d) care for, spray, trim, protect and replant trees and shrubbery which are part of the Common Areas.
- (e) maintain all Restricted Area Improvements, and provide lawn care, including mowing, spraying, replanting grass and replacing sod on all portions of the Common Areas. The Association shall maintain the Restricted Area.

(f) if any vacant or unimproved Lot is not maintained by the Owner thereof, mow, care for, maintain and remove rubbish from such Lot and do anything else the Association deems necessary or desirable to keep such Lot neat in appearance and in good order, all at the expense of such Owner.

(g) maintain, repair and replace all structures, improvements and facilities which are part of the Common Areas and maintain all creeks, streams or ponds and all drainage and retention facilities which are part of the Common Areas.

(h) pay all taxes and assessments levied or assessed against the Common Areas, and any other property owned or leased by the Association.

(i) keep true and correct records of accounts in accordance with generally accepted accounting principles, and have available for inspection by any Owner, at reasonable times during regular business hours, books which specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise.

(j) upon reasonable request and during reasonable business hours, make available for inspection by any Owner the books, records and financial statements of the Association, together with current copies, as amended from time to time, of this Declaration, the Articles of Incorporation and Bylaws of the Association.

(k) perform any other duties required of the Association as provided elsewhere in this Declaration.

(l) maintain all amenities including, without limitation, the pool, poolhouse/cabana, exercise room, walking trails, and lake.

(m) provide for the periodic painting of exterior painted surfaces and for the repair and replacement of roofs of each Unit;

(n) provide lawn care, consisting of mowing, edging, fertilizing and weed control of grass areas, and trimming of all trees, whether in a Common Area or on a Lot, but such services shall not include the care of any area made inaccessible to the Association.

(o) provide and pay for the costs of spring start-up, winterization, and repair, maintenance and water for the use of a common lawn sprinkler system on the Lots;

(p) Provide snow removal for the Private Streets and for the driveways, front yard sidewalks and front porches (but not back patios) on the Lots as soon as possible when the accumulation reaches two (2) inches or more; and

(q) establish, maintain and expend reserve funds for the future repair and replacement of Common Areas, for the future repair and replacement of Units' roofs, and for the periodic painting of exterior painted surfaces, as described above.

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

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

**Section 2. Individual Responsibility.** Each Unit owner shall repair and maintain the interior of the Unit, and all components thereof, owned by that Unit owner. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit owner shall include repair, maintenance and replacement of all appliances, all plumbing fixtures and electrical fixtures, and all windows, screens and doors, including the frames, sashes and jabs, and the hardware therefor. Except for those specific items listed as an Association responsibility in Article VIII, Section 1, each Unit owner shall repair and maintain the exterior of his or her Unit. In the event a Unit owner fails to timely make a repair of any part of the Common Areas (including, without limitation, any trunk or branch utility lines) is caused by the negligent or intentional act of any Unit owner or occupant, or is as a result of the failure of any Unit owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express or implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owner's Unit and on that Unit owner. The determination that such maintenance or repair is necessary, or has been so caused by the Unit owner, shall be made by the Board.

**Section 3. Trash Services.** To the extent not provided as a service by any governmental authority, the Association shall provide, one day per week, for the collection and disposal of rubbish and garbage from each Completed Unit subject to assessment.

## ARTICLE IX

### UTILITY SERVICES

Each Unit owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, and to reimburse the Association for that owner's Unit's share of any utility cost that the Board reasonably determines is attributable to use by that owner's Unit. All other utility costs shall be common expenses and paid by the Association.

## ARTICLE X

### INSURANCE; LOSSES

**Section 1. Fire and Extended Coverage Insurance.** Each Unit owner shall maintain for that owner's Unit, blanket fire and extended coverage against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to Units similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Townhome



Property and not less than one hundred percent (100%) of the current insurable replacement costs of such items (exclusive of land, foundations, and excavations). The Association shall be named as an additional insured on such insurance coverage and shall be provided upon request, with a certificate of insurance evidencing such coverage.

This insurance shall also:

(a) provide coverage for the Units and built-in or installed improvements, fixtures and equipment that are part of a Unit;

(b) provide for the payment of losses thereunder by the insurer to the Association (or its nominee) as insurance trustee for the benefit of the Association, each Unit owner and the holder of each first mortgage of record on the Units, as their interests appear and as set forth in this Declaration;

(c) contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy;

(d) contain a waiver of subrogation of rights by the carrier as to the Association, its officers and directors, and all Unit owners; and

(e) provide that the insurance shall not be prejudiced by any acts or omissions of the Association or its Board of Directors.

The Unit owner shall be responsible for the deductible under the insurance on any property damage or casualty loss to the Unit. The proceeds from the insurance received by the insurance trustee shall be used to repair, reconstruct, or rebuild the Units damaged or destroyed by said fire or casualty unless all Unit owners and their first mortgagees agree in writing not to repair, reconstruct, or rebuild pursuant to Article X, Section 10.

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

Section 3. Fidelity Coverage. The Board may obtain and maintain, at the Association's cost and as a common expense, fidelity insurance providing coverage for the

Association against dishonest acts on the part of directors, managers, trustees, employees, agents, and volunteers responsible for or handling funds belonging to or administered by the Association.

**Section 4. Hazard Insurance Carrier.** Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Kansas which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports-International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard Poor's International Confidential Rating Service. Insurance issued by a carrier that does not meet the forgoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

**Section 5. Other Association Insurance.** In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, officers and directors liability insurance, and such other insurance as the Board may determine.

**Section 6. Nominee; Power of Attorney.** There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit owner, by acceptance of a deed to an Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiations of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders, and the Association, and the Townhome, runs with the land, and is coupled with an interest.

**Section 7. Unit Owners' Insurance.** Each Unit owner and occupant shall obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and similar matters of the type and nature of coverage commonly referred to as "tenants' improvements and betterments" or an "HO6" policy.

**Section 8. Sufficient Insurance.** In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction Unit owners and their first mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect not to make the repair, restoration or reconstruction, then such repair, restoration or reconstruction shall not be undertaken.

**Section 9. Insufficient Insurance.** In the event the improvements forming a part of the Townhome or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit owners and their first mortgagees if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the improvements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit owners in proportion to their respective undivided interests in the Common Areas. Should any Unit owner refuse or fail after reasonable notice to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

**Section 10. Election Not to Restore.** The Association may, with the written consent of all Unit owners and their first mortgagees, both given within seventy-five (75) days after damage or destruction, determine not to repair, restore or reconstruct any damage or destruction. In the event of such an election not to repair or restore damage or destruction or reconstruct such unit or Units, the net proceeds of insurance paid by reason of such damage or destruction shall be distributed among the owners of the damaged Units, and the holders of their respective mortgage liens, (as their interests may appear), in the proportions of their interests in the Units.

## ARTICLE XI

### GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

**Section 1. Easements of Enjoyment; Limitations.** Every Unit owner shall have a right and easement (i) for ingress to and egress from such owner's Lot and Unit, (ii) of enjoyment in, over and upon the Common Areas; and (iii) an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, including, without limitations, parking rules and regulations, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's parking facilities. Each Unit owner shall be deemed to have delegated that Unit owner's right of enjoyment to the Common Areas and to ingress and egress to the occupants of that owner's Unit.

**Section 2. Right of Entry for Repair, Maintenance and Restoration.** The Association shall have a right of entry and access to, over, under, upon and through all of the Townhome Property, including each Unit and the Common Areas, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any and all utilities, improvements, and other items, things or areas of or in the Townhome Property. In the event of an emergency, the Association's right of entry to a Unit may be exercised without notice; otherwise, the Association shall give the Unit owners or occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit.

**Section 3. Easements for Encroachments.** Each Unit and the Common Areas shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Areas created or arising by reason of overhangs; or by reason of deviations in

construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Plats. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Plats, shall and do exist so long as the encroachments remain.

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

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

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

**Section 7. Easements Reserved to Declarant.** Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over, under and upon each Unit and the Common Areas (a) for a ten year period of time from the date of the closing by Declarant of the first sale of a Unit to a bona fide purchaser, for access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods provided for warranties for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made by Declarant with Unit purchasers, and (c) for the initial sales and rental period, but for no longer than ten years from the time of the closing of the first sale of a Unit to a bona fide purchaser, to maintain and utilize one or more Units and appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

All rights and easements reserved to Declarant, its successors and assigns, pursuant to this section, shall be exercised and utilized, as the case may be, in a reasonable manner, and in

such way as not to unreasonably interfere with the operation of the Association and the rights of owners and occupants of Units.

**Section 8. Power of Attorney.** Each Unit owner other than Declarant, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

**Section 9. General.** The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed or conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

## ARTICLE XII

### ASSESSMENTS AND ASSESSMENT LIENS; RESERVE FUNDS

**Section 1. Creation of Lien and Personal Obligation.** Each Owner of a Unit shall pay all assessments, annual and special, provided for in this Declaration. At closing, a membership fee of \$600.00 per Unit will be collected. Each such assessment, together with interest thereon as hereinafter provided, filing fees, attorneys' fees, court costs and other costs of collection thereof (such interest and all of such fees and costs being herein sometimes collectively called "**Costs**"), shall be a continuing lien upon the Unit against which such assessment is made, which lien shall be enforceable as provided in Section 6 of this Article XII. Each assessment, together with all Costs relating thereto, shall also be the personal obligation of the Owner of the Unit at the time the assessment is made. If an Owner consists of more than one person and/or entity, the obligations of the Owner for the payment of such assessments and Costs shall be joint and several.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used to provide funds to enable the Association to exercise the powers and perform the duties herein set forth, including (by way of example only and not by way of limitation) (a) the costs of maintenance, management, operation, repair and replacement of the Common Areas and of the Restricted Area Improvements; (b) the costs of management and administration of the Association, such as compensation paid by the Association to managers, accountants, attorneys, other professionals and employees; (c) the costs of utilities (including water, electricity, gas and sewer provided directly to the Association and not individually metered or billed by the service providers directly to the Units) and other services provided by the Association which generally benefit and enhance the value and desirability of the Addition; (d) the costs of any insurance maintained by the Association; (e) reasonable reserves for major items, contingencies, replacements and other purposes as deemed appropriate by the Association; (f) the costs of bonding any persons handling funds of the Association; (g) taxes, assessments and other governmental impositions paid by the Association; and (h) the costs of any other items or services to be provided or performed by the

Association as set forth in this Declaration or in the Association's Articles of Incorporation or Bylaws, or in furtherance of the purposes of the Association.

Section 3. Annual Assessments.

(a) Each Unit shall be subject to an annual assessment of \$500.00 which may be levied by the Association from year to year and shall be paid to the Association annually in advance by the Owner of such Unit. The Association may increase the annual assessment in its discretion as is necessary to fulfill the responsibilities and duties of the Association. If the amount collected from annual assessments for any year exceeds the Association's costs and expenses for such year, such excess shall be taken into consideration in preparing the budget and determining the annual assessments to be levied for the following year. If the amount collected from annual assessments for any year is inadequate to meet the Association's actual or projected costs and expenses for such year, special assessments may be levied at any one or more times during such year as provided in Section 4 of this Article XII. A portion of the annual assessments for each year shall be allocated to reserves to provide required funds for repair or replacement of major items and for other contingencies and proper purposes. The responsibility of the Association shall be only to provide for such reserves as the Association in good faith deems reasonable, and neither Developer nor the Association shall have any liability to any Owner if such reserves are inadequate.

(b) The first annual assessment with respect to each Unit shall be due as of the first day of the month after the date on which a Unit on such Lot is first occupied for residential purposes (i.e., occupancy of a model Unit for sales purposes shall not trigger the assessment). Such first annual assessment shall be prorated on a per diem basis in accordance with the number of days remaining in such year from and after the date the assessment is due. The annual assessment with respect to each Unit for each subsequent year shall be due as of January 1 of such year.

(c) Failure of the Association to levy annual assessments for any one year shall in no way affect the right of the Association to do so for any subsequent year.

(d) The Association shall give at least 30 days advance notice to each Owner of a Unit whose address is then listed with the Association of the amount of the annual assessment on such Unit and the date on which such assessment is due.

Section 4. Special Assessments.

(a) The Association may at any time or times during any year, if necessary in its discretion to enable the Association to carry out the purposes herein set forth, levy against each Unit (from and after the date on which such Unit first becomes subject to annual assessments as provided in Section 3(b) of Article XII) a special assessment over and above the annual assessment for such year authorized by Section 3 of Article XII.

(b) The Association shall give at least 30 days advance notice to each Owner of a Unit whose address is then listed with the Association of the amount of each special assessment and the date on which such assessment is due.

Section 5. No Waiver or Offset. No Owner shall be exempt from payment of the assessments and Costs imposed under this Declaration by reason of the waiver by such Owner of the use or enjoyment of the Common Areas or by nonuse thereof or by abandonment of such Owner's Unit. All assessments, annual and special, shall be payable in the amounts specified in the notices thereof given by the Association, and there shall be no offsets against such amounts for any reason.

Section 6. Delinquency: Enforcement of Liens.

(a) If any Owner of a Unit fails to pay any assessment, annual or special, on or before the 30th day following the date on which such assessment is due, or fails to pay any other amount owing under this Declaration within 30 days of the due date (collectively, a "Delinquent Amount") then such Delinquent Amount shall bear interest from the due date until paid at the Default Rate of Interest.

(b) Each assessment, annual or special, shall become delinquent on the 30th day after the date on which such assessment is due, and payment of the assessment and Costs (including interest), and any other Delinquent Amounts owing under this Declaration may then be enforced as a lien on such Unit in proceedings in any court in Wyandotte County, Kansas, having jurisdiction of suits for the enforcement of such liens. The Association may, whenever any assessment is delinquent, file a certificate of nonpayment of assessments (the "Delinquency Statement") with the Register of Deeds, and for each Delinquency Statement so filed, the Association shall be entitled to collect from the Owner of the Unit described therein an administrative fee which fee shall be part of the Costs included in the lien.

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

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

(e) Any lien which arises against any Unit by reason of any Delinquent Amount shall be subordinate to the lien of a first mortgage ("First Mortgage") on such Unit acquired in good faith and for value securing the payment of a loan made by a bank, savings and loan association or other institutional lender ("First Mortgagee"), provided such First Mortgage is recorded prior to the recording of the Delinquency Statement. If any lien for Delinquent Amounts and Costs which accrued prior to the date a First Mortgagee acquires title to the Unit has not been extinguished by the process whereby the First Mortgagee acquired title, the First Mortgagee shall not be liable for Delinquent Amounts or Costs arising or accruing prior to such date and in the case where the Delinquent Amount is an assessment or other sum owing to the Association, upon request by the First Mortgagee to the Association, the Association shall release such lien of record; PROVIDED, HOWEVER, that (i) any Delinquent Amount and Costs which are so extinguished shall continue to

be the personal obligation of the delinquent Owner, and the party owed such amount may seek to collect them from such Owner even after such Owner is no longer the Owner of the Unit, and (ii) if the Owner against whom the original assessment was made is the purchaser of or redeems the Unit, the lien shall continue in effect and may be enforced for the Delinquent Amount and Costs which were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Any such Delinquent Amount and Costs which are not collected within a reasonable time may be reallocated by the Association among all other Owners of Units, irrespective of whether collection proceedings have been commenced or are then pending against the defaulting Owner.

Section 7. Certificate of Nonpayment of Assessments. Upon request, any party acquiring title to or any interest in a Unit shall be entitled to a certificate from the Association setting forth the amount of due but unpaid assessments and Costs pertaining to such Unit, if any, and the Association shall thereafter be prevented from asserting that the amount of accrued but unpaid assessments and costs is in excess of the amount so indicated in the certificate.

Section 8. Pledge of Assessment Rights as Security. The Association may pledge the right to exercise its assessment powers as security for any obligation of the Association; PROVIDED, HOWEVER, that after the Turnover Date any such pledge shall require the prior affirmative vote of two-thirds (2/3) of each class of members.

### ARTICLE XIII

#### CONDEMNATION

Each Unit owner, by accepting title to a Unit, grants to the persons who shall from time to time constitute the Board of the Association an irrevocable power of attorney, coupled with an interest, to conduct negotiations with the State, a political subdivision thereof or any other corporation, agency or authority having the power of eminent domain that seeks to acquire any of the Townhome Property. In such event, the Association shall act as the representative of the Unit owners, and the Board may cause the Association to execute and deliver the appropriate conveyance on behalf of all owners in return for the agreed consideration. The Board shall allocate such consideration, to the extent possible, to the repair, replacement or restoration of the condemned Common Areas and then to the Unit owners and their respective mortgagees, as their interests may appear, in proportion to their respective undivided interests in the Common Areas. In the event negotiations shall fail, the condemning authority may join the Association as a party defendant in lieu of naming all Unit owners and such proceedings shall bind all Unit owners; however, any owner having an interest in the Common Areas may be made a party defendant in such proceedings. Subject to the foregoing provisions, in the event that any Unit is taken by condemnation or the exercise of the power of eminent domain, each owner and the holder of mortgages on the Unit shall be entitled to seek and have their just damages for the taking of the Unit, as allowed by law, including severance damage, if any. No provision herein shall be deemed to give any Unit owner or any other party priority over the rights of the holder of any first mortgage on any Unit in the case of a distribution of condemnation awards for losses to or a taking of the mortgaged Unit.



## ARTICLE XIV

### TOWNHOME INSTRUMENT REQUIREMENTS

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

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

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

## ARTICLE XV

### AMENDMENTS

**Section 1. Power to Amend.** Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration shall require the consent of at least two thirds (2/3) of the members. Prior to the Turnover Date, the Declarant shall have the right to amend this Declaration subject to approval by the Federal Housing Authority, or Veterans Administration. Notwithstanding the foregoing:

(a) The consent of Unit owners of not less than two-thirds (2/3) of the class of members of the Units shall be required to terminate the Townhome and this Declaration; and

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

## ARTICLE XVI

### GENERAL PROVISIONS

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

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

**Section 2. Enforcement.** In addition to any other remedies provided in this Declaration, Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit owner shall have rights of action against each other for failure to comply with the provisions of the Townhome Instruments and applicable law, and with respect to decisions made pursuant to authority granted thereunder, provided, the Association shall have the right to assess reasonable charge against a Unit owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration, and provided, further, that neither the Association or its directors, officers, or their representatives, shall be liable to any Unit owner or occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit owner, occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortuous act of the Association or such director, officer or other representative. Notwithstanding the foregoing, in the event of any dispute between them, no Unit owner or Unit owners shall institute legal proceedings against the Association without first submitting the dispute to non binding arbitration by a single independent arbitrator selected by the Board. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provision hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

**Section 3. Severability.** Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Townhome Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provision of this Declaration, which provisions shall remain in full force and effect. This Declaration shall be and remain in full force and effect even if the Townhome Property (or any part thereof) has not been properly submitted to the provisions of the Townhome Act or the formalities of the Townhome Act have not been completely followed.

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

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

Section 6. Annexation. Additional land(s) may be included in the land covered hereby and become subject to this Declaration upon the filing of record of a Supplemental Declaration of Covenants, Conditions and Restrictions which shall extend the scheme of the covenants, conditions and restrictions of this Declaration to such real property; PROVIDED, HOWEVER, that such Supplemental Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary or appropriate to reflect the different character, if any, of the added real properties and as are not materially inconsistent with this Declaration and which do not adversely affect the concept of this Declaration. Furthermore, the following provisions shall apply:

(a) Prior to the Turnover Date, additional real property may be added and annexed to the land and scheme of the Declaration by the Declarant at the sole discretion of the Declarant.

(b) After the Turnover Date, the Association may add or annex additional real property to the land and scheme of this Declaration by obtaining the consent of the Owners representing at least seventy-five percent (75%) of the members.

(c) In the event any person or entity other than the Declarant desires to add or annex additional residential properties and/or Common Areas to the scheme of this Declaration, such proposed annexation must have the prior written consent and approval of the Declarant (prior to the Turnover Date) and at least seventy-five percent (75%) of the votes of all of the Association membership.

(d) Any real property additions or annexations made pursuant to this Section 6 of Article XVI, when made, shall automatically extend the jurisdiction, functions, duties and membership of the Developer, Association and the Architectural Committee to the real properties added or annexed.

Section 7. Mortgage on Common Areas. After the Turnover Date, the Common Areas may not be dedicated or transferred to any public agency, authority or utility, or otherwise mortgaged or conveyed without the consent of at least two-thirds (2/3) of the members.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first above written.

DECLARANT:

CRYSTAL MOUNTAIN, LLC  
A Kansas limited liability company

By: 

J. Douglas Bohi, Member

CRYSTAL FOUNTAIN, LLC  
A Kansas limited liability company

By: 

J. Douglas Bohi, Member

STATE OF KANSAS            )  
                                  ) SS.  
COUNTY OF Johnson )

BEFORE ME, the undersigned authority, a Notary Public, on this day personally appeared J. Douglas Bohi, Member of Crystal Mountain, LLC and Crystal Fountain, LLC, Kansas limited liability companies, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and consideration therein expressed, as the act and deed of Crystal Mountain, LLC and Crystal Fountain, LLC, in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 22<sup>nd</sup> day of August, 2003.

[SEAL]

Trish Charlons  
Notary Public

My Commission Expires:

TRISH CHARLONS  
Notary Public - State of Kansas  
My Appt. Expires 8-27-05

Exhibit ALegal Description:

Block 1, Lots 1 through 6; Block 2, Lots 1 through 5; Block 3, Lots 1 through 4; Block 4, Lots 1 through 5; Block 5, Lots 1 through 3; Block 6, Lots 1 through 4; Block 7, Lots 1 through 4; Block 10, Lots 1 through 6; Block 11, Lots 1 through 5; Block 12, Lots 1 through 5; Block 13, Lots 1 through 4; Block 14, Lots 1 through 4; Block 15, Lots 1 through 2; Block 16, Lots 1 through 4; Block 17, Lots 1 through 4; Block 18, Lots 1 through 4; Block 19, Lots 1 through 5; Block 20, Lots 1 through 5; Block 21, Lots 1 through 3; Block 22, Lots 1 through 4; Block 23, Lots 1 through 4; Block 24, Lots 1 through 3; Block 25, Lots 1 through 3; Block 26, Lots 1 through 6; Block 27, Lots 1 through 6; Block 28, Lots 1 through 5; Block 29, Lots 1 through 4; Block 30, Lots 1 through 4; Block 31, Lots 1 through 4; Block 32, Lots 1 through 5; Block 33, Lots 1 through 4; Block 34, Lots 1 through 4; Block 35, Lots 1 through 5; Block 36, Lots 1 through 4; Block 37, Lots 1 through 4; Block 38, Lots 1 through 3; Block 39, Lots 1 through 4; Block 40, Lots 1 through 4; Block 41, Lots 1 through 3; Block 42, Lots 1 through 6; Block 43, Lots 1 through 4, Final Plat of Crystal Ridge Subdivision, a subdivision in the City of Kansas City, Wyandotte County, Kansas.

Exhibit B

Legal Description:

Tracts B, C, and D, Final Plat of Crystal Ridge Subdivision, a subdivision in the City of Kansas City, Wyandotte County, Kansas, according to the recorded plat thereof.

Exhibit C

Legal Description:

Tracts E and F, Final Plat of Crystal Ridge Subdivision, a subdivision in the City of Kansas City, Wyandotte County, Kansas, according to the recorded plat thereof.

## EXHIBIT D

Description of Categories of Units

<u>Unit</u>	<u>Description</u>
Ranch	2 bedrooms, 2 baths
2-Story	3 bedrooms, 2 baths
Split level	3 bedrooms, 2 baths



EXHIBIT E

2003R-34566  
REGISTER OF DEEDS  
WYANDOTTE COUNTY, KS  
RECORDED ON  
11-21-2003 2:56:04 PM  
THOMAS W. GRONEMAN  
REGISTER OF DEEDS  
REC. FEE: 136.00  
DEED FEE:  
QUIT CLAIM FEE:  
PAGES: 33

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