

## DECLARATION OF SOLHEIM CONDOMINIUMS

THIS CONDOMINIUM DECLARATION is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by Solheim Group, LLC, a Kansas limited liability company (herein called the "Developer").

### WITNESSETH:

WHEREAS, Developer is the record owner of that certain real estate and two (2) residential unit buildings, fixtures, easements, and appurtenances thereto, commonly described as Solheim Condominiums, Manhattan, Kansas, and legally described hereinafter; and

WHEREAS, the purpose of this Declaration is to submit the certain real estate owned by the Developer and described hereinafter and the seventy-two (72) residential unit buildings and permanent improvements on such real estate to the condominium form of ownership and use, in the manner provided by the Kansas Apartment Ownership Act, K.S.A. 58-3101 through 58-3129, and all amendments thereto (the "Act"); 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 of 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, Solheim Condominium Owners Association, a Kansas corporation not organized for profit, has been incorporated under the laws of the State of Kansas for the purpose of exercising such powers and functions; and

WHEREAS, Developer desires and intends that the Owners, Mortgagees, 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, the Developer makes the following declarations pursuant to and in accordance with the provisions of the Act and all amendments thereto.

## **Article I Definitions**

The terms used in this Declaration shall have the meanings stated in the Act and as follows, unless the context otherwise requires:

- 1.01 “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 Condominium Unit into compliance with the provisions of this Declaration or the Association Rules; (ii) any other charge designated as a Special Assessment in this Declaration, or the Association Rules; and (iii) attorneys’ fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration.
- 1.02 “Association” shall mean the Solheim Condominium Owners Association, a Kansas not for profit corporation, established for the primary purpose of enforcing the covenants, conditions, restrictions, liens, Assessments, easements, privileges, rights, and other provisions contained herein.
- 1.03 “Association Articles” shall mean the Articles of Incorporation establishing the Association as a not for profit corporation under Kansas law. The Association Articles were recorded on December 29, 2020, in the office of the Secretary of State of Kansas. A copy of the Association Articles is attached hereto marked as Exhibit “A” and made a part hereof.
- 1.04 “Association Board” or “Board” shall mean the Association Board of the Association.
- 1.05 “Association Bylaws” shall mean the bylaws governing the Association. Pursuant to K.S.A. 58-3118, no modification of or amendment to the Bylaws shall be valid unless set forth in or annexed to a duly recorded amendment to this Declaration. The Bylaws may be amended in the manner provided for therein, but no such amendment will be adopted which would affect or impair the validity or priority of any Mortgage covering a Condominium Unit unless the Mortgagee shall join in the execution of such amendment. A copy of the Association Bylaws is attached hereto marked as Exhibit “B” and made a part hereof.
- 1.06 “Association President” shall mean the duly elected or appointed President of the Association.
- 1.07 “Association Rules” or “Rules” shall mean the reasonable rules and regulations adopted by the Association.

- 1.08 "City" shall mean the City of Manhattan, Kansas, a municipal corporation of the State of Kansas.
- 1.09 "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, including, without limitation, the Common Elements;
  - 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 Condominium Unit), landscaping maintenance, snow and ice 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; and
  - I. 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.
- 1.10 "Community" shall mean the certain real estate legally described in Section 2.02 below, together with all improvements and structures erected, constructed or contained therein or thereon, including all buildings, and all easements, rights and appurtenances belonging

thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to the provisions of the Act under this Declaration, as amended from time to time.

1.11 "Condominium Unit" or a "Unit" shall mean a Condominium Unit defined by the Act and as shown in the Plat as being intended for the exclusive ownership and possession by an Owner. Each Condominium Unit shall consist of the volumes or cubicles of space which lie between the lower, upper, and lateral or perimetrical boundaries described as follows:

- A. The upper and lower boundaries extended to their planer intersections with the perimetrical boundaries as follows:
  - 1. the upper boundary shall be the plane of the lower unfinished surface of the ceiling; and
  - 2. the lower boundary shall be the plane of the upper surface of the supportive structure which serves as the Condominium Unit's floor, excluding any floor covering such as carpeting, vinyl, hardwood or ceramic tile, which are all deemed to be part of the Condominium Unit.
- B. The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls and any common walls separating the tenants (excluding gypsum board, paint, wallpaper and light fixtures), extended to their planer intersection with each other and with the upper and lower boundaries which are all deemed to be part of the Condominium Unit.

Condominium Units shall include all non-structural interior partition walls located within the boundaries of the Unit except such part as may comprise part of the Common Elements; the decorated surfaces of all boundary walls, ceilings and floors, including wallpaper, paint, interior brick surface, gypsum board, lathe, wallboard, plaster, carpeting, flooring and other finishing materials; all immediately visible fixtures, appliances, kitchen cabinets, and water and sewage pipes located within the boundaries of the Condominium Unit and serving only the Condominium Unit; and the mechanical systems and installations providing electrical power, gas, water, heating and air conditioning service to the Condominium Unit, including the individual air conditioning condensing unit and hot water heater appurtenant to each Condominium Unit, even though such equipment may be located outside the boundaries of the Condominium Unit, provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities situated within such Condominium Unit, and forming a part of any system serving one or more other Condominium Units or the Common Elements, shall be deemed to be a part of such Unit; and, provided further, that no load bearing wall providing structural support and located within the boundaries of the Condominium Unit shall be deemed part of the Condominium Unit.

- 1.12 “County” shall mean Riley County, Kansas.
- 1.13 “Developer” shall mean Solheim Group, LLC, a Kansas limited liability company, 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 “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.
- 1.16 “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.
- 1.17 “Member” of the Association shall mean any Person who or which is a record Owner of a fee or undivided fee interest in any Condominium Unit. 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 Condominium Unit, all such Persons shall be Members of the Association.
- 1.18 “Mortgagee” shall mean a holder of a Mortgage who has given written notice to the Association that the Mortgagee is the holder of a Mortgage affecting all or any part of the Community as hereinafter provided, or any insurer or guarantor of such a Mortgage. “Mortgage” shall mean a first lien Mortgage on one (1) or more Units.
- 1.19 “Owner” shall mean the Person or Persons owning a Condominium Unit in fee simple.
- 1.20 “Person” shall mean an individual, corporation, partnership, trustee, or other entity capable of holding title to real estate, and his, her, or its respective heirs, representatives, successors, and assigns.
- 1.21 “Plat” shall mean the plat of the Condominium Units comprising the Community as recorded in the Office of the Register of Deeds of Riley County, Kansas.
- 1.22 “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.

## **Article II Declaration**

- 2.01 Establishment of the Community; Declaration. In accordance with the provisions of the Master Declaration, Developer hereby establishes the Community and this Declaration to govern the maintenance, use, and occupancy of Units 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.
- 2.02 Description of the Real Estate Submitted to Condominium Ownership. The legal description of the real estate owned by the Developer which is hereby submitted to the condominium form of ownership and use in the manner provided by the Act is:
- The Solheim Addition, Lot 1, an addition to the City of Manhattan, Riley County, Kansas.
- 2.03 Plat of Survey of the Real Estate Submitted to Condominium Ownership. Attached hereto, marked Exhibit "C" and made a part hereof, is a Plat dated July 21, 2020, by SMH Consultants showing the legal description, the location and dimensions of the submitted real estate described above. The Plat attached as part of Exhibit "C" shows the location and dimensions of all existing seventy-two (72) units and common areas and facility improvements of this submitted real estate. The legal description of each Unit shall consist of the identifying number or letter for such as shown on the Plat, the name of the Community, the name of the county in which the real estate is situated, the name of the office in which this Declaration is recorded, and the deed book and page number where the first page of this Declaration is recorded.

## **Article III Description of the Residential Units which are Constructed**

- 3.01 Solheim Building No. A and the 36 Units Completed. Solheim Building No. A and the Units included therein are a three-story wood frame building with a stone veneer on the first two stories and wood paneling on the third story with a concrete basement where covered reserved parking spaces are located. The building contains 36 Units, 12 Units on each of the three (3) floors. Building No. A shall have an address of 3010 Fieldhouse Circle, Manhattan, Kansas 66503. Building No. A shall consist of Units 101-112, 201-212, and 301-312.

### Street Addresses for Building A:

1. 3010 Fieldhouse Circle, Unit 101, Manhattan, Kansas 66503.
2. 3010 Fieldhouse Circle, Unit 102, Manhattan, Kansas 66503.
3. 3010 Fieldhouse Circle, Unit 103, Manhattan, Kansas 66503.
4. 3010 Fieldhouse Circle, Unit 104, Manhattan, Kansas 66503.
5. 3010 Fieldhouse Circle, Unit 105, Manhattan, Kansas 66503.

6. 3010 Fieldhouse Circle, Unit 106, Manhattan, Kansas 66503.
7. 3010 Fieldhouse Circle, Unit 107, Manhattan, Kansas 66503.
8. 3010 Fieldhouse Circle, Unit 108, Manhattan, Kansas 66503.
9. 3010 Fieldhouse Circle, Unit 109, Manhattan, Kansas 66503.
10. 3010 Fieldhouse Circle, Unit 110, Manhattan, Kansas 66503.
11. 3010 Fieldhouse Circle, Unit 111, Manhattan, Kansas 66503.
12. 3010 Fieldhouse Circle, Unit 112, Manhattan, Kansas 66503.
  
13. 3010 Fieldhouse Circle, Unit 201, Manhattan, Kansas 66503.
14. 3010 Fieldhouse Circle, Unit 202, Manhattan, Kansas 66503.
15. 3010 Fieldhouse Circle, Unit 203, Manhattan, Kansas 66503.
16. 3010 Fieldhouse Circle, Unit 204, Manhattan, Kansas 66503.
17. 3010 Fieldhouse Circle, Unit 205, Manhattan, Kansas 66503.
18. 3010 Fieldhouse Circle, Unit 206, Manhattan, Kansas 66503.
19. 3010 Fieldhouse Circle, Unit 207, Manhattan, Kansas 66503.
20. 3010 Fieldhouse Circle, Unit 208, Manhattan, Kansas 66503.
21. 3010 Fieldhouse Circle, Unit 209, Manhattan, Kansas 66503.
22. 3010 Fieldhouse Circle, Unit 210, Manhattan, Kansas 66503.
23. 3010 Fieldhouse Circle, Unit 211, Manhattan, Kansas 66503.
24. 3010 Fieldhouse Circle, Unit 212, Manhattan, Kansas 66503.
  
25. 3010 Fieldhouse Circle, Unit 301, Manhattan, Kansas 66503.
26. 3010 Fieldhouse Circle, Unit 302, Manhattan, Kansas 66503.
27. 3010 Fieldhouse Circle, Unit 303, Manhattan, Kansas 66503.
28. 3010 Fieldhouse Circle, Unit 304, Manhattan, Kansas 66503.
29. 3010 Fieldhouse Circle, Unit 305, Manhattan, Kansas 66503.
30. 3010 Fieldhouse Circle, Unit 306, Manhattan, Kansas 66503.
31. 3010 Fieldhouse Circle, Unit 307, Manhattan, Kansas 66503.
32. 3010 Fieldhouse Circle, Unit 308, Manhattan, Kansas 66503.
33. 3010 Fieldhouse Circle, Unit 309, Manhattan, Kansas 66503.
34. 3010 Fieldhouse Circle, Unit 310, Manhattan, Kansas 66503.
35. 3010 Fieldhouse Circle, Unit 311, Manhattan, Kansas 66503.
36. 3010 Fieldhouse Circle, Unit 312, Manhattan, Kansas 66503.

3.02 Solheim Building No. B and the 36 Units Completed. Solheim Building No. B and the Units included therein are a three-story wood frame building with a stone veneer on the first two stories and wood paneling on the third story with a concrete basement where covered reserved parking spaces are located. The building contains 36 Units, 12 Units on each of the three floors. Building No. B shall have an address of 3022 Fieldhouse Circle, Manhattan, Kansas 66503. Building No. B shall consist of Units 101-112, 201-212, and 301-312.

Street Addresses for Building B:

1. 3022 Fieldhouse Circle, Unit 101, Manhattan, Kansas 66503.

2. 3022 Fieldhouse Circle, Unit 102, Manhattan, Kansas 66503.
3. 3022 Fieldhouse Circle, Unit 103, Manhattan, Kansas 66503.
4. 3022 Fieldhouse Circle, Unit 104, Manhattan, Kansas 66503.
5. 3022 Fieldhouse Circle, Unit 105, Manhattan, Kansas 66503.
6. 3022 Fieldhouse Circle, Unit 106, Manhattan, Kansas 66503.
7. 3022 Fieldhouse Circle, Unit 107, Manhattan, Kansas 66503.
8. 3022 Fieldhouse Circle, Unit 108, Manhattan, Kansas 66503.
9. 3022 Fieldhouse Circle, Unit 109, Manhattan, Kansas 66503.
10. 3022 Fieldhouse Circle, Unit 110, Manhattan, Kansas 66503.
11. 3022 Fieldhouse Circle, Unit 111, Manhattan, Kansas 66503.
12. 3022 Fieldhouse Circle, Unit 112, Manhattan, Kansas 66503.
  
13. 3022 Fieldhouse Circle, Unit 201, Manhattan, Kansas 66503.
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31. 3022 Fieldhouse Circle, Unit 307, Manhattan, Kansas 66503.
32. 3022 Fieldhouse Circle, Unit 308, Manhattan, Kansas 66503.
33. 3022 Fieldhouse Circle, Unit 309, Manhattan, Kansas 66503.
34. 3022 Fieldhouse Circle, Unit 310, Manhattan, Kansas 66503.
35. 3022 Fieldhouse Circle, Unit 311, Manhattan, Kansas 66503.
36. 3022 Fieldhouse Circle, Unit 312, Manhattan, Kansas 66503.

3.03 Floor Plans; Verified as Built. Simultaneous with the recording of this Declaration, there has been filed pursuant to K.S.A. 58-3113, at the office of the Register of Deeds for Riley County, Kansas, a set of the floor plans of Solheim Building No. A and Solheim Building No. B. Solheim Building No. A and Solheim Building No. B are hereinafter referred to as the "Condominium Buildings" or singularly, as a "Condominium Building." Such floor plans show the layout, location, numbers, and dimensions of each Unit. The floor plans



further state the name of the buildings to be Solheim Building No. A and Solheim Building No. B. Attached as part of Exhibit D is the statement of Dennis Smith, President of LK Architecture, Inc., dated August 25, 2021, certifying that the project is built in accordance with the construction documents and specifications and plans as filed with and approved by the City, the governmental subdivision having jurisdiction over the issuance of building permits for the construction of such buildings.

#### **Article IV**

#### **Description of Unit Numbers, Statement of Location, Approximate Area, Number of Rooms, and Immediate Common Area to which Units have Access.**

- 4.01 Unit Boundaries. Each Unit described in this Declaration and the floor plans on file with this Declaration includes that part of the building that lies within the boundary of the Unit. For purposes of clarification and not as a supplement to the definition of a Unit set forth in Article I above, the boundary of each Unit shall be the interior surface of its perimeter walls, floors, and ceilings, all doors and windows therein, and all lath, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the furnished surfaces thereof, shall be deemed a part of each Unit, while all other portions of such walls, floors, and ceilings shall be deemed a part of the Common Elements. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit while any portions thereof serving more than one Unit or any portion of the common area or facilities shall be deemed a part of the Common Elements.
- 4.02 Unit Number, Location, Rooms and Access. Each Unit has a direct access to a common area hall and a common area walk and drive leading to a public street. The Units are further described on the attached Exhibit "D."

#### **Article V**

#### **Description of Common Elements**

- 5.01 Common Elements. The common area and facilities shall be referred to herein as the "Common Elements" and shall consist of all of the property in the Community, except the Condominium Units, and shall specifically include, but not be limited to, all of the real estate, the foundations and footings, load bearing walls, perimetrical walls, structural slabs, columns, beams and supports, all central utility facilities, if any, public utility lines, perimeter walls of Units other than the interior surfaces thereof located with the Units, all structural parts of the buildings in the Community, the roofs, lobbies, mechanical equipment, and storage areas designated as Common Elements, ramps, handrails, sidewalks, stairways and entrances or communication ways, sidewalks, boardwalks, lawn areas, landscaping, trees, curbs, roads, walkways, streets and parking lots, landscaping, all common recreational facilities such as any game, entertainment, meeting or assembly rooms, exercise or fitness room, swimming pool and grounds, and surrounding areas, sun decks, common interior area,

and all other portions of the Community and all other parts of the Community necessary or convenient to the existence, maintenance, and safety, or normally in common use as defined by the Act and all amendments thereto.

- 5.02 Limited Common Elements. The limited Common Elements of the Community, which are sometimes referred to herein as the "Limited Common Elements," include one (1) exterior balcony or terrace, one (1) covered parking space in lower-level garage assigned to each Unit as described by the floor plans on file with the Register of Deeds of Riley County, Kansas. Such parking spaces as limited Common Elements are reserved for the use of the Unit bearing the same number as the balcony or terrace area, and the parking space as shown on the floor plans to the exclusion of all other Units.
- 5.03 Ownership of Undivided Interest in the Common Areas; Method of Allocation. Ownership of each Unit shall include ownership of an undivided interest in all Common Elements for all purposes. Such undivided interest in the Common Elements may be reallocated or altered, without the consent of all of the Unit owners, by an amended Declaration duly recorded. The reallocation will be the required fraction so that ownership of each Unit will include an equal undivided interest in all of the common areas and equal voting rights. In the event of such expansion, the Developer, or its successors and assigns, shall record a plat of survey and floor plans showing the additional real estate and additional Units as an amendment to this Declaration. The amended Declaration shall contain a legal description of the real estate added to the Community; a description of all Units, limited and general Common Elements, and the exact reallocation of individual interest in the Common Elements, all as set forth hereinafter. The undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance, Mortgage or other instrument.

## **Article VI The Association**

- 6.01 Formation of Association. The Association has been organized as a non-profit corporation for a perpetual term under the laws of the State of Kansas.
- 6.02 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, or the Association Rules.
- 6.03 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 Condominium Buildings, the landscaping of the Community and any other property not otherwise maintained by individual Owners, as described herein. 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. Taxes and Assessments. To pay all taxes and Assessments which are or could become a lien on any property of the Association.
- E. 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 VII, Section 7.03(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.
- F. Easements. The Association is authorized and empowered to grant upon, across, or under real estate 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.
- G. 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, and Association Rules. 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.

- H. 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 XVI, Section 16.02 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.
- I. 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, or the Association Rules.

6.04 Association Membership, Meetings and Voting Rights.

- A. Each Owner shall be a Member of the Association, pursuant to Article I, Section 1.17

above. A membership in the Association shall be inseparable from the Unit to which it applies and may not be transferred separately from such Unit.

- B. Ownership of each Unit shall include ownership of an undivided interest in all Common Elements for all purposes, including voting.
- C. 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.
- D. Subject to the provisions of Article VI, Section 6.12 below, each Unit shall be entitled to only one (1) vote in the Association, the number of Owners notwithstanding. Except to the extent otherwise set forth herein this Declaration, 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 Unit, the vote for such Unit 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 Unit.

6.05 Association Board 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 VI, Section 6.12 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 XVI, Section 16.02 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. Notwithstanding anything to the contrary, Developer shall have the right to fill at least one position on the Board, and such individual does not have to be an Owner.

- 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 VI, Section 6.12 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 transactions 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.

6.06 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 VI, Section 6.06 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.
- 6.07 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, or any Association Rules, 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.
- 6.08 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.
- 6.09 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and Developer (to the extent a claim may be brought against Developer by reason of its appointment, removal, or control over Board directors, or officers) 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 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, 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.

- 6.10 Non-Liability of Officials. To the fullest extent permitted by law, neither Developer, the Association President, any directors or officers of the Association, 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.
- 6.11 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.
- 6.12 Developer's Control of the Association. Notwithstanding anything in this Article VI or elsewhere in this Declaration to the contrary, Developer shall maintain absolute and exclusive control over the Association, including appointment and removal of the Association President and all other officers of the Association, all directors of the Board, until the earlier of the following: (i) at such time as Developer chooses to turn over the operation of the Association to the Association; or (ii) at such time one hundred percent (100%) of the Units in the Community (as the Community exists from time to time) have been sold by Developer to third parties. Until such time, only Developer will be entitled to cast any votes with respect to the election and removal of Association officers or directors, or any other matter requiring the vote or approval of Association. 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 VI, Section 6.12 by written instrument without affecting any rights of control not relinquished.
- 6.13 Service of Process. The Person who receives service of process for all purposes required by the Act, and all amendments thereto, is Thomas L. Vilkanskas, Jr., 1213 Hylton Heights Road, Suite 129b, Manhattan, Kansas 66502, or such other person as may from time to time be designated by the Association.



**Article VII**  
**Assessments, Creation of Lien, and Personal Obligation**

- 7.01 Assessments in General. Each Owner (not including any Mortgagee as long as the Mortgagee is not the Owner), by and at the time of acceptance of a deed or other conveyance of an interest in a Unit, 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.
- 7.02 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.
- 7.03 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. Each Unit Owner will be liable for an equal share of the Common Expenses and will share equally in any surplus.
  - B. The Association shall create a budget for 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 \$250.00 per month per Unit, subject to increases as provided in this Section 7.03. The Regular Assessments shall be paid monthly. The Unit owner shall pay such assessments starting upon ownership of their Unit. It is agreed that a portion of such assessments shall be utilized to pay special assessments on the property.
  - 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.

7.04 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 Unit 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.

7.05 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.

7.06 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to an Owner upon the Owner's closing on a Unit, and shall be due on a semi-annual basis, payable to the Association in advance.

7.07 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.

7.08 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.

- 7.09 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.
- 7.10 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 Unit against which the Assessments are made as well as a personal obligation of the Unit's Owner. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by such successor. If an Owner shall consist of more than one Person, the obligations of the Owner for the payment of Assessments on such Owner's Unit shall be joint and several.
- 7.11 Right of Association to Enforce Payment of Assessment. By the acceptance of title to a Unit, 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.
- 7.12 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 estate 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.
- 7.13 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.
- 7.14 Liability of Mortgagee, Lienor or Judicial Sale Purchaser for Assessments. Where the Mortgagee acquires title to a Unit as a result of a foreclosure of a Mortgage, or where others acquire title as a result of such foreclosure, or where said Mortgagee accepts a deed to a Unit in lieu of foreclosure, or where the Developer accepts a deed to a Unit in lieu of foreclosure, such acquirer of title, and its heirs, executors, legal representatives, successors and assigns, will not be liable for the share of Common Expenses or Assessments by the Association

pertaining to such Unit or chargeable to the former Owner of such Unit which became due prior to the acquisition of title. Such unpaid share of Common Expenses or Assessments will be deemed to be Common Expenses, collectible from all of the Unit Owners, including such acquirer of title, and its heirs, executors, legal representatives, successors, and assigns.

- 7.15 Assignment of Claim and Lien Rights. The Association will have the right to assign its claim and lien rights for the recovery of any unpaid Assessment to the Developer or to any Unit Owner or group of Unit Owners, or to any third party.

### **Article VIII Destruction or Obsolescence of Improvements**

8.01 Destruction or Obsolescence.

- A. All of the Owners irrevocably constitute and appoint the Association, or its successors and assigns, their true and lawful attorney-in-fact in their respective name, please and stead, for the purpose of dealing with the Community upon its destruction, obsolescence or condemnation, as hereinafter provided, and acceptance by any Grantee of a deed from the Developer or from any Owner shall constitute appointment of the attorney-in-fact here provided. As attorney-in-fact, the Association, through its authorized officers, shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of an Owner which is necessary and appropriate to exercise the powers herein granted.
- B. Unless other action is approved by the holders of mortgages on Units which have at least fifty-one percent (51%) of the votes on Units subject to Mortgages, any restoration, reconstruction or repair of the Community will be completed substantially in accordance with this Declaration and the original plans and specifications, to a condition substantially as good as that in existence prior to the damage, with each Condominium and Common Elements having the same vertical and horizontal boundaries as before; provided that such repair and reconstruction shall be subject to modifications required by changes in applicable governmental regulations and the use of contemporary building materials and technology to the extent feasible.
- C. Except as otherwise provided in Section 8.01(E) below, in the event of damage to or destruction of all or any part of the improvements as a result of fire or other casualty, the Association shall adjust all claims and arrange for and supervise the prompt repair and restoration thereof (including any damaged Unit relating to the shell, but not including furniture, wall coverings, furnishings, fixtures, equipment, interior finishes, or other personal property supplied or installed by an Owner). The proceeds of any insurance collected shall be made available to the Association for the purpose of such repair and restoration. Each Owner shall have the right to supervise the

redecorating of such Owner's Unit subject to the rights of any Mortgagee therein. If the casualty is only to those parts of one (1) Unit for which the responsibility of maintenance and repair is that of the Owner, then the Owner will be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty will be that of the Association.

- D. When the damage is to both Common Elements and Units, the insurance proceeds shall be applied first to the cost of repairing those portions of the Common Elements which enclose and service the Units, then to the cost of repairing the other Common Elements, and thereafter to the cost of repairing the Units. If the insurance proceeds are insufficient to repair and reconstruct the improvements, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds, if any, and/or shall be deemed a Common Expense and a Special Assessment therefore shall be levied. Such Special Assessment shall be made pro rata according to each Owner's proportionate interest in and to the Common Elements and shall be due and payable within thirty (30) days after written notice thereof. The Association shall have the authority to cause the repair and restoration of the improvements using all of the insurance proceeds for such purpose notwithstanding the failure of an Owner to pay the Special Assessment.
- E. If more than sixty-seven percent (67%) of all of the Common Elements, not including real estate, are destroyed or damaged, and if the Owners representing the aggregate ownership of seventy-five percent (75%) of the Common Elements, do not voluntarily, within one hundred (100) days thereafter, make provision for reconstruction, the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association President, the entire remaining Community shall be sold by the Association, as attorney-in-fact for all of the Owners, free and clear of the provisions contained in this Declaration, the Plat, and the Bylaws. The insurance settlement proceeds shall be collected by the Association, and such proceeds shall be divided by the Association, and such proceeds shall be divided by the Association according to each Owner's interest (as such interests appear on the policy or policies), and such divided proceeds shall be paid into respective separate accounts, each such account representing one (1) of the Units in the Community. Each such account shall be in the name of the Association and shall be further identified by the number of the Unit and the name of the Owner. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from any one account to another, toward the full payment of the lien of any Mortgage against the Unit represented by such separate account. There shall be added to each such account, the apportioned amount of the proceeds derived from the sale of the entire Community. Such apportionment shall be based upon each Owner's proportionate interest in the Common Elements. The total funds of each account shall be used and disbursed, without contribution from one account to another, by the Association, as attorney-in-fact.

- F. If the Owners representing a total ownership interest of seventy-five percent (75%) of the Common Elements adopt a plan for reconstruction, then all of the Owners shall be bound by the terms and provisions of such plan. Any Assessment made in connection with such plan shall be due and payable as provided by the terms of the plan and shall otherwise be a Special Assessment.
- G. The Owners representing an aggregate ownership interest of seventy-five percent (75%) or more of the Common Elements, may agree that the Common Elements of the Community are obsolete and that the same should be renewed or reconstructed. In such instance, the expenses thereof shall be payable by all of the Owners as a Common Expense.

8.02 Judicial Partition. There shall be no judicial partition of the Common Elements, nor shall Developer or any person acquiring any interest in the Community or any part thereof seek any such judicial partition, until the happening of the conditions set forth in Section 8.01 hereof in the case of damage or destruction or unless the Community has been removed from the provisions of the Act; provided, however, that if any Unit shall be owned by two (2) or more co-tenants, as tenants in common or as joint tenants, nothing herein contained shall be deemed to prevent a judicial partition between such co-tenants, but such partition shall not affect any other Unit.

8.03 Condemnation. If all or any part of the Community is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association, as attorney-in-fact, and each Owner shall be entitled to participate in proceedings incident thereto at their respective expense. The Association shall give timely written notice of the existence of such proceedings to all Owners and to all Mortgagees known to the Association to have an interest in any Unit. The expense of participation in such proceedings by the Association shall be a Common Expense. The Association, as attorney-in-fact, is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and such other persons as the Association, in its sole discretion, deems necessary or advisable to aid or advise it in matters related to such proceedings. All damages or awards for any such taking shall be deposited with the Association, as attorney-in-fact, and such damages or awards shall be applied as provided herein. In the event that an action in eminent domain is brought to condemn a portion of the Common Elements (together with or apart from any Unit), the Association, as attorney-in-fact, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto, or to convey such portion of the Community to the condemning authority in lieu of such condemnation proceeding.

## **Article IX Insurance**

9.01 Insurance. Insurance, other than title insurance, that shall be carried upon the property of the Community and the property of the Condominium Owners will be governed by this Article IX.

9.02 Authority to Purchase; Named Insured. All insurance policies upon the Community's property, including, without limitation, the Common Elements, will be purchased by the Association. The named insured will be the Association individually and as agent for the Owners, without naming them. Provision will be made for the issuance of Mortgagee endorsements and memoranda of insurance to the Mortgagees of Units. Such policies will provide that payments by the insurer for losses will be made to the Association. Owners may obtain coverage at their own expense upon their personal property and for their personal liability and living expense.

9.03 Coverage.

A. **Casualty.** The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design, location and use, insuring the Community against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the improvements, including fixtures, equipment and other personal property of the Association (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and Limited Common Elements. Periodically, prior to the renewal of any such policy or policies of insurance, the Association shall either: (1) obtain an opinion from a qualified insurance appraiser; (2) obtain an appraisal from a qualified insurance appraiser; or (3) perform an analysis using an industry accepted valuation program, for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion, appraisal or analysis shall be a Common Expense. All such policies of insurance shall comply with the provisions of this Article and shall: (i) contain a standard mortgagee loss payable clause endorsement in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interests may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

B. **Public Liability.** The Association shall obtain and maintain at all times a

comprehensive policy or policies of public liability and property damage insurance in such amount, but not less than One Million Dollars (\$1,000,000), and in such form as shall be required by the Association to protect said Association and the Owners of all Units, which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party, and for claims against the officers and members of the Association Board for claims arising out of the negligent performance of their duties.

- C. **Fidelity Bonds.** The Association shall obtain and maintain fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond shall cover the maximum funds that will be in the custody of the Association, but not less than the sum of three (3) months' assessments on all Units plus the reserve funds of the Association, if any.
- D. **Other Insurance.** The Condominium Buildings and improvements upon the real estate in the Community hereby submitted to the condominium form of ownership and all expansions thereof will be insured as the Association may determine to be necessary or desirable from time to time.

9.04 Increase in Insurance Premiums. A Unit Owner will pay the Association the amount of any increase in its insurance premiums occasioned by use, misuse, occupancy, or abandonment of a Unit or its appurtenances, or of the Common Elements, by the Owner, members of the Owner's family, or the Owner's tenants, visitors, guests, employees, or agents.

## **Article X Covenants, Conditions and Restrictions for Use and Occupancy**

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

- 10.01 General. The use of a Unit which violates any laws or regulations of the City, the County or the State of Kansas shall not be permitted.
- 10.02 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.
- 10.03 Single-family Use; Restricted. Each Condominium Building and each Unit are intended for and restricted exclusively to single-family residential use. Ownership of each Unit and an undivided interest in the Common Elements are subject to the contents of this Declaration.



The use of the Common Elements is further subject to the rules and regulations made by the Association.

- 10.04 Animals; Pets. Dogs and cats are allowed in the Units, subject to the rules of the Association. All such dogs and cats must be licensed and current on all vaccinations. There shall not be more than two pets per Unit without prior written consent of the Association. No animals listed on the City of Manhattan dangerous animal list are permitted at any time. Each Owner is responsible for their pet. All pets must be leashed in hallways and in all public spaces. All pet waste must be picked up and discarded properly. No pet waste is permitted on decks. Dogs must be taken outside the Condominium Buildings for relief. If there are complaints of loud, barking, or nuisance pets, the Association reserves the right to banish the animal from the Community.

No other animals or pets of any kind will be kept in any Unit or upon any other portion of the Community, except with the prior written consent of the Association.

- 10.05 Decoration. No occupant of a Unit shall cause anything to be hung, displayed, or placed on the exterior walls, doors, windows, interior or exterior hallways or walkways, ceilings of walkways or roof of the Condominium Buildings; and they will not otherwise change the appearance of any portion of the exterior of the Condominium Buildings or the surfaces of interior building walls facing common elements with the prior written consent of the Association. One front door mat is allowed directly in front of the Unit door, so long as it is 18" x 30" or smaller. Front door décor, for example a wreath, is allowed in a tasteful manner and at the discretion of the Association. No outdoor lighting shall be used except with the prior approval of the Association. No clothes lines or other similar devices and no "For Sale" signs will be allowed on any part of the Community without the prior written consent of the Association.
- 10.06 Outside Antennae and Satellite Dishes. Television antennae, radio antennae, and satellite dishes are prohibited.
- 10.07 Grills. Propane grills, electric grills, and pellet grills are permitted. Grill mats are required. Charcoal grills or grills that produce a large open flame are not permitted.
- 10.08 Window Treatments. All window treatments must be of a style approved by the Association. It is intended that all window treatments are uniform.
- 10.09 Balcony. All outside furniture must be of a size, quality and color so as not to distract from the appearance of the Community. All outdoor furniture must be secured in the event of a wind event. No stadium or folding chairs are allowed. A television is allowed on the balcony where marked with an outlet. Balconies are not to be used to store personal property. No clothing, towels, or linens of any kind are to be hung from a balcony. No political signs, flags, fundraising signs, or signs of any kind are to be hung from a balcony.

10.10 Nuisances. No nuisances will be allowed in the Community, nor any use or practice that is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the Community by the residents. All parts of the Community will be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage allowed to accumulate, nor any fire hazard allowed to exist. No Owner will permit any use of his or her Unit or make any use of the common area and facilities that will increase the cost of insurance upon the Community's property.

10.11 Leasing. No Unit and/or Unit shall be rented for transient purposes, or, without the prior written approval of the Association Board or the Association manager, 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 Unit. No Owner shall be entitled to rent his or her 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 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 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 Unit and/or 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.

10.12 Parking. Automobiles, motorcycles, pickup trucks  $\frac{3}{4}$  ton and smaller, vans, and bicycles may be parked in the designated parking areas of the Community, but only where so designated by the Association and in accordance with the rules and regulations of the Association. One covered reserved parking space for each Unit is designated by the Association for use by the occupants of each Unit and the remaining spaces will only be used by those persons specified by the Association. The open-air parking lot located between the buildings shall be used by the occupants of each Unit. If there are any available parking spaces in the open-air parking lot, such parking spaces may be utilized by a guest of a Unit owner. No other vehicles and objects, including, without limitation, trucks larger than  $\frac{3}{4}$  ton pickups, trailers, shall be allowed to park in the Community. All vehicles must be operable and there is no vehicle maintenance permitted in the Community.

10.13 Swimming Pool. A Common Element of the Community will be a swimming pool. The use of such swimming pool will be only by Unit owners and their guests, provided such guests are accompanied by the Unit owner. The use of such swimming pool will be so designated by the Association and in accordance with the rules and regulations of the Association.

10.14 Businesses. No Owner or occupant residing within a Unit may conduct any business, trade, garage sale, moving sale, rummage sale, or similar activity at or about the Community, whether within a Unit or otherwise, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the

business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all zoning and other legal requirements for the Community; (iii) the business activity does not involve door-to-door solicitation of residents of the Community; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Community which is noticeably greater than that which is typical of Units in which no business activity is being conducted; (v) the business activity is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required. Leasing or rental of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Developer with respect to its development and sale of the Community or its use of any Units which it owns within the Community, including the operation of a rental or leasing program to which certain Units within the Community may be subject.

- 10.15 Right of Access. Each Owner grants a right of access to such Owner's Unit to the Developer, or to the Association manager, and to any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in an Owner's Unit and threatening other Units, Common Elements or Limited Common Elements or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within an Owner's Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. Such access will occur with 24-hour notice, unless otherwise agreed. In case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not. Each Owner further grants a right of access to such Owner's Unit to the Developer and/or the Developer's agent for the purpose of making all repairs required by any warranty delivered to the Owner at the closing of the sale of an Owner's Unit. To the extent that damages inflicted on the Common Elements, Limited Common Elements or any Unit through which access is taken, the Owner or the Association, if it causes the same, shall be liable for the prompt repair thereof.
- 10.16 Limitation of Liability. The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds or problems resulting from the operation or lack of operation of sewer lines servicing the Community, or for injury or damage to a

person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements, Limited Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Unit for the loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements or Limited Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed, or allowed for any reason, except by action taken by the Board in accordance with the Association Bylaws.

**Article XI**  
**Maintenance, Alteration, and Improvement**

11.01 Units.

- A. The Association will maintain, repair, and replace:
1. The Common Elements, which by definition includes, but is not limited to, all portions of Units contributing to the support of a Condominium Building, the outside surfaces of walls of a Condominium Building, the surfaces of interior building walls facing Common Elements, the outside surfaces of doors leading into Units and fixtures attached to such surfaces. Such maintenance will be done at the expense of the Association.
  2. All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services, except electrical switches, electrical outlets, light bulbs, appliances, bathroom fixtures, kitchen fixtures, air conditioning condensate lines and similar equipment, contained within or attached to the portions of the Units to be maintained by the Association. Such maintenance will be done at the expense of the Association, unless made necessary by the negligence of any Owner, member of an Owner's family or such Owner's tenants, visitors, guests, employees, or agents. In the event of such negligence, such maintenance shall be completed by the Association at the expense of such Owner.
  3. All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services and all fixtures and equipment contained within portions of the Units to be maintained by the Owners, if necessary to properly furnish utility services to the parts of the Condominium Building other than the Unit within which they are contained. Such maintenance will be done at the expense of the Owner of the Unit where the work is done.
  4. All incidental damage caused to Units by such maintenance work will be promptly repaired by the Association, at the expense of the party responsible for the expense of such work.

- B. The responsibility of the Owners will be as follows:
1. To maintain, repair, and replace all portions of Units, including all screens and other materials that may enclose a portion of a Unit, and the fixtures and equipment contained within a Unit, except the portions thereof to be maintained, repaired, and replaced by the Association. Such maintenance work will be done at the expense of the Owner of the Unit where the work is done.
  2. To wash all accessible windows of a Unit.
  3. To maintain, repair, and replace all HVAC units.
  4. To keep all common areas clean and not leave trash or refuse in any common area. To keep all access codes confidential.
  5. Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the Condominium Building or the surfaces of the interior building walls facing Common Elements without the prior written approval of the Association Board.
- C. The liability of the Association and Owners for maintenance, repair, and replacement, as aforesaid, will be reduced to the extent by which such expenses are met by the proceeds of insurance carried by the Association.
- D. Except as elsewhere reserved to the Developer, no structural alterations will be made in the portions of any Unit to be maintained by the Association without the prior written approval of the Owners of the Unit in which such work is to be done and the Association Board. A copy of plans for all such work prepared by an architect licensed to practice in the State of Kansas will be filed with the Association Board prior to the start of such work.

11.02 Common Elements.

- A. The maintenance, repair, replacement, and operation of the Common Elements will be the responsibility of the Association and a Common Expense. However, the liabilities of the Association for such Common Expenses will be reduced to the extent by which they are met by the proceeds of insurance carried by the Association.

11.03 Limitation upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the property located within the Community, the Association will not be liable to the Unit Owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the

Association or caused by the elements or other owners or persons. Further, nothing in this Declaration shall not relieve an Owner of liability for damage to the Common Elements or Limited Common Elements caused by the Owner, the Owner's family members, guests, invitees, lessees, licensees, pets, or animals as a consequence of the negligence, recklessness or willful misconduct of such person, pet, or animal. The cost of repair for any damage so caused by the Owner, the Owner's family members, guests, invitees, lessees, licensees, pets, or animals shall be a special assessment against the Unit Owner responsible therefor.

## **Article XII Remedies**

- 12.01 **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 Units, 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 XII, Section 12.01 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.
- 12.02 **Association Remedies.** In addition to the remedies available in Article XII, Section 12.01 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 VII above.
- 12.03 **Legal Action.** In addition to any other remedies available under this Article XII, but subject to the alternative dispute resolution provisions provided in Article VI, Section 6.11 above, if any Owner (either by Owner's conduct or by the conduct of any Occupant of such Owner's Unit 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.

- 12.04 Expenses of Enforcement. Any Person authorized under this Article XII 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 XII, Section 12.04 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.
- 12.05 Limitation of Remedies. Notwithstanding the provisions of this Article XII, 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 Unit; (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 XIII Term and Amendment**

- 13.01 Covenants Running with the Land. The covenants, conditions, restrictions, liens, Assessments, easements, privileges, rights, and other provisions of this Declaration shall run with the real estate 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 seventy-five percent (75%) of the then Owners of the Units 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 Units in said Community.

In addition, this Declaration may be voluntarily terminated in the manner provided for in the

Act at any time, by the approval of all Unit Owners and the holders of all liens affecting any of its Units. In addition thereto, if it is determined in the manner elsewhere provided in this Declaration that the Units will not be reconstructed because of major damage, the Declaration will be terminated without agreement.

- 13.02 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.
- 13.03 Amendments. Amendments to this Declaration other than those provided in Article XIII, Section 13.02 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. However, an amendment of this Declaration for the sole purpose of setting forth a modification of or an amendment to the Association Articles or the Association Bylaws will require only the approval of not less than seventy-five percent (75%) of the entire membership of the Association Board and of not less than seventy-five percent (75%) of the votes of the entire membership 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 XIV Easements and Encroachments**

- 14.01 Utility Easements, Common Elements. Easements are hereby declared and granted for utility purposes, including the right to install, lay, maintain, repair, and replace water mains and pipes, sewer lines, gas mains and lines, telephone wires and equipment, and electrical conduits, wires, and equipment, over, under, along and on any part of the Common Elements or limited common areas or facilities for the Community.
- 14.02 Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement of way over all roads, parking



areas, walkways, halls, stairways, and other Common Elements, in favor of all Owners and the Developer for all proper and nominal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners and the Developer, subject to all restrictions in this Declaration. The Limited Common Elements shall be subject to a nonexclusive easement in favor of the Association for repair, service and other uses reasonably intended or required by the Association.

- 14.03 Easement of Support. Each Unit, Common Element and Limited Common Element shall have an easement of support from every other Unit, Common Element, and Limited Common Element which provide such support.
- 14.04 Easement for Pest Control Services. The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Units, Limited Common Elements, and Common Elements. In the event the Association chooses to provide such pest control services, the Association and its duly authorized contractors, representatives and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units, Limited Common Elements, and Common Elements. The Association shall not be liable for any illness, damage or injury caused by the dispensing of these chemicals for this purpose.
- 14.05 Encroachments. In the event that, by reason of the construction, reconstruction, settlement or shifting of any building or improvements or the design or construction of any Unit, any part of the common areas or facilities, or limited common areas or facilities, encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit encroaches upon any part of any other Unit, valid easements for the maintenance of such encroachment are hereby established and shall exist for the benefit of such Units so long as all or any part of the building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner of any Unit in favor of the Owners of the common areas or facilities if such encroachment occurred due to the willful or negligent conduct of said Owner or Owners.
- 14.06 Easements are Appurtenant. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon the Developer, its successors and assigns, and any Owner, purchaser, Mortgage and other Person having an interest in the real estate comprising the Community, or any part thereof.
- 14.07 Deeds – Reference to Declaration to Convey Easements. Reference in the respect deeds of conveyance of any Unit or in any Mortgage or deed of trust to the easements and rights described in this Declaration shall be sufficient to create and reserve such easements and rights to the respective grantees and Mortgagees of such Units, as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such deeds, mortgages, or trust deeds.

14.08 Title Exceptions. In addition to the items set forth in this Article XIV, the Community, the Units, Common Elements and Limited Common Elements are further declared to be subject to the following restrictions, easements, conditions, and limitations:

- A. The terms, conditions, covenants, and provisions of the Declaration;
- B. Sewer, water, electric, telephone, and other utility easements, if any, now or hereafter placed of record, including the right to erect, maintain and install all electrical, telephone and television wires, cables and conduits, sewers, water pipes and drains, and other improvements for public conveniences or utilities in, on, under, over, and through the Community.
- C. Easements existing and to be created for ingress and egress to the Community;
- D. Reservation of all oil, gas, and other minerals, together with all rights of ingress and egress for the use and enjoyment of same, which have heretofore been reserved or conveyed to others;
- E. Any encroachments or facts which might be revealed by an accurate survey or personal inspection of the Condominium;
- F. Ad valorem taxes which are a lien upon the Community, but are not yet due and payable;
- G. Any and all restrictive covenants, easements, rights of way, building setback lines, drainage and utility line easements, and reservations presently of record applicable to the Community;
- H. Building setback lines and drainage and utility line easements as shown on the Plat to be recorded, if any; and
- I. A construction loan mortgage necessary to finance the construction of the Community.

**Article XV**  
**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 Developer in connection with the construction, completion, sale, or leasing of the Units, or any part of the property owned by Developer.

The Developer reserves the right to change the interior design and arrangement of all Units, including without limitation, the erection or removal of interior walls, fixtures, plumbing, electrical wiring, doors, flooring, heating and air conditioning, ventilation and ducts, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer, or its affiliates or stockholders, owns the Units so altered. Changes in the boundaries between Units, as hereinbefore provided, shall be reflected by an amendment to the Plat and, if necessary, an amendment to this Declaration. If two (2) adjoining Units are combined by the Developer to make one (1) large Unit, the Association's assessments and the ownership interest in the Common Elements attributable to the combined Unit shall remain as though there are two (2) separate Units. An amendment to the Plat or this Declaration reflecting an alteration of the boundaries of the Units owned by the Developer must be signed and acknowledged only by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that any change which shall result in a change in the undivided interest in the Common Elements or the Limited Common Elements or a change in the share of the Common Expenses or the Limited Common Expenses with respect to Owners of Units other than the Developer at the time of such change or which shall result in the alteration of boundaries of Units (other than the common walls separating the Units owned by the Developer) may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein.

The Developer expressly reserves the right until the fifth anniversary of the recordation of this Declaration to increase the size of any Unit created by this Declaration and owned by the Developer and to increase the height of any wall on the Property without the consent of any Owner or Mortgagee. There is no limitation on this option to increase the size of the Units.

The Developer otherwise expressly reserves the right to use one (1) or more Units owned by the Developer as models, and any portion of the Common Elements or one (1) or more Units for management offices and/or sales and leasing offices. The Developer reserves the right to relocate offices and/or models from time to time within the Property. Upon relocation or sale of a model, the management office or sales office and the furnishings thereof may be removed by the Developer. The Developer further reserves the right to maintain on the Common Elements advertising signs in any location or locations and from time to time to relocate and/or remove the same, all in the sole discretion of the Developer.

Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Association Board nor their use of the Community or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Community until the Developer has completed all of the Developer's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model Units, the showing of the Community and the Units therein, and the display of signs thereon and therein. These special Developer rights exist so long as the Developer owns any Unit in the Condominium or holds any Unit in the Condominium for sale in the ordinary course of business or leases any Unit it owns.

The Developer expressly reserves the right to lease any Unit which it may own in the Community on such terms as it may deem proper and desirable and may transfer Units subject to such lease, including leasing such Unit(s) to the Association for use as a management, sales, or leasing office.

## **Article XVI General Provisions**

- 16.01 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.
- 16.02 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.
- 16.03 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.
- 16.04 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 Thomas L. Vilkanskas, Jr.
- 16.05. Association Board 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 on behalf of some or all of the Owners, as the case may be.

- 16.06. Power of Attorney of Association Board. Each Owner, by accepting title to a 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 Unit and the 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 Unit so acquired or leased.
- 16.07 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 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 Unit. Some utility expenses may be charged to the Association, and the Owner shall be responsible to pay such utility expenses to the Association that are assessed to such Unit. Electricity, gas, water, and sewers serving all of the Units shall be separately metered and shall be a Common Expense. The Association shall have authority to pay the cost of the utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon use of the utility or any other formula the Association may deem appropriate.
- 16.08 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.
- 16.09 Taxation. Each Unit and its percentage of undivided interest in the Common Elements shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including, without limitation, special ad valorem levies and special assessments by the City or Riley County, Kansas. Neither the Condominium Buildings nor any of the Common Elements, common areas, and facilities shall be deemed to be a parcel.
- 16.10 No Waiver of Rights. The failure of the Association or the Association Board or of any Unit Owner to enforce any covenant, restriction or other provision of the Act, this Declaration, the Association Articles, the Association Bylaws, or the Association Rules will not constitute a waiver of the right to do so thereafter.

## **Article XVII**

### **Rights of Mortgagees**

17.01 Notification of Mortgagees Required. Any Mortgagee who properly notifies the Association in accordance with the terms of Section 17.04 hereof shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking, should in the opinion of the Board, be estimated to exceed Ten Thousand and No/100 Dollars (\$10,000.00); (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Ten Thousand and No/100 Dollars (\$10,000.00); (d) any condemnation of all or a portion of the Community; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

17.02 Right of Inspection. Mortgagees shall have the right to examine the books and records of the Association or the Community and to receive annual reports, other financial data, and, upon Mortgagee's request, a copy of the annual compiled statement, if any, within one hundred twenty (120) days following the end of any fiscal year of the Association.

17.03 Priority of Mortgagees.

- (A) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments herein and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such Mortgage there may be a lien created pursuant to this Declaration on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein. Notwithstanding the foregoing, the lien created pursuant to this Declaration is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.
- (B) No provision of this Declaration, the Association Articles, the Association Bylaws or the Association Rules shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees of the Units pursuant to their Mortgages in the case of distribution to Unit Owners of the insurance proceeds or condemnation awards for losses or a taking of Units or the Common Elements, the Limited Common Elements or any portion thereof.
- (C) As provided in the Act, all assessments, property taxes and other charges imposed by any taxing authority which may become liens prior to a Mortgage, shall be separately

assessed against and collected on each Unit as a single parcel, and not on the Community as a whole.

- (D) No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

17.04 Request for Protection by Mortgagees. Whenever any Mortgagee desires the benefit of the provisions of this Article XVII to be applicable to such Mortgagee, the Mortgagee shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to the Association's address, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by the Mortgagee. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee.

17.05 Blanket Mortgages. The entire Community, or some or all of the Units included therein, may be subjected to a single or blanket Mortgage constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the Community or Units covered thereby. Any Unit included under the lien of such Mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such Mortgage shall provide a method whereby any Unit Owner may obtain a release of his Unit from the lien of such Mortgage and a satisfaction and discharge in recordable form upon payment of the holder of the Mortgage of a sum equal to the reasonable proportionate share attributable to his Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the Mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the Mortgage, or, if the Mortgage contains no such provisions, then according to the proportionate share of the Common Elements of the Condominium attributable to such Unit or Units.

### **Article XVIII 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 real estate 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.

IN WITNESS WHEREOF, Developer has executed this Declaration this \_\_\_\_ day of \_\_\_\_\_, 2021.

**SOLHEIM GROUP, LLC,**  
a Kansas limited liability company

By: \_\_\_\_\_  
Thomas L. Vilkanskas, Jr., \_\_\_\_\_

**DEVELOPER**

#### **ACKNOWLEDGMENT**

STATE OF KANSAS, COUNTY OF RILEY, ss:

BE IT REMEMBERED on this \_\_\_\_ day of \_\_\_\_\_, 2021, before me the undersigned, a notary public in and for the county and state aforesaid, came Thomas L. Vilkanskas, Jr., \_\_\_\_\_ of Solheim Group, LLC, a Kansas limited liability company, 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 limited liability company, as Developer.

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

\_\_\_\_\_  
Notary Public

My appointment expires:



**Signature Page  
Approval of the Master Association  
Declaration of Solheim Condominiums**

IN WITNESS WHEREOF, the foregoing Declaration of Solheim Condominiums are hereby approved by the Master Association in accordance with Article II of the Master Declaration on this \_\_\_\_ day of \_\_\_\_\_, 2021.

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

By: \_\_\_\_\_  
\_\_\_\_\_, President

**MASTER ASSOCIATION**

**ACKNOWLEDGMENT**

STATE OF KANSAS, COUNTY OF RILEY, ss:

BE IT REMEMBERED on this \_\_\_\_ day of \_\_\_\_\_, 2021, before me the undersigned, a notary public in and for the county and state aforesaid, came \_\_\_\_\_, 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 said person's 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.

\_\_\_\_\_  
Notary Public

My appointment expires: