

**FIRST RESTATEMENT AND AMENDMENT OF THE DECLARATION
OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE BRIANNA COURT TOWNHOMES**

THIS FIRST RESTATEMENT AND AMENDMENT OF THE DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE BRIANNA COURT TOWNHOMES is made and entered into this ____ day of April, 2013, by Ronald J. Forkenbrock, the Community Association President and member of the Community Association Board, as the designated representative of the Community Association Members.

WITNESSETH:

WHEREAS, the Developer has previously placed of record the Declaration of Easements, Covenants, Conditions and Restrictions for the Miller Ranch Townhomes dated July 10, 2006, which declaration was recorded on July 11, 2006, in Book 824 at Pages 4471 - 4501 in the office of the Register of Deeds of Riley County, Kansas (the "Declaration"); and

WHEREAS, the Declaration affects certain real estate situated in Manhattan, Riley County, Kansas, described on Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, the name of the Miller Ranch Townhomes Community Association, Inc., a Kansas corporation not organized for profit, being formed for the purpose of exercising the powers of the Declaration, has been changed to the Brianna Court Townhomes Community Association, Inc.; and

WHEREAS, pursuant to the Declaration's Article XIII, Paragraph 13.1, any amendment to the Declaration must be approved by a Majority of the Community Association Board Members prior to its adoption by the Community Association Members. Amendments may be adopted at a meeting of the Community Association Members upon the approval thereof of two-thirds (2/3) of all Community Association Members entitled to vote thereat, or without any meeting if all Community Association Members have been duly notified and if two-thirds (2/3) of all of the Community Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment; and

WHEREAS, pursuant to the Declaration's Article XIII, Paragraph 13.3(b), until the latter of when: (i) ninety-five percent (95%) of all of the Lots in the Community (as it exists from time to time) have been sold to third parties, and (ii) Developer owns less than two acres of the following land, Lots 1, 2, 6A, 6B, 7A and 7B, the Townhomes at Miller Ranch, Unit Two, a residential planned unit development, in the City of Manhattan, Riley County, Kansas, as it exists from time to time, this Declaration may not be amended by the Community Association Members pursuant to Article XIII without the written consent of the Developer, which may be withheld for any reason; and

WHEREAS, both of the eventualities in the Declaration's Article XIII, Paragraph 13.3(b) as set forth above have occurred and therefore Article XIII, Paragraph 13.3(b) is inapplicable; and

WHEREAS, the below-described amendments have been both approved by a Majority of the Community Association Board Members and adopted at a meeting of the Community Association Members with the requisite number of votes in favor of such amendments to the Declaration; and

WHEREAS, the Community Association Members desire to amend the Declaration upon the terms hereinafter set forth.

NOW, THEREFORE, the Community Association Members, by and through the Community Association President, hereby amend the Declaration as follows:

ARTICLE I
Definitions

Unless the context clearly requires otherwise, the following terms used in this Declaration are defined as follows. Defined terms appear throughout this Declaration with the initial letter of each word of such term capitalized.

1.1 "Annexation Property" means any additional real property which is annexed to the Community, thereby becoming a part thereof and subject to this Declaration, in accordance with the provisions hereof.

1.2 "Assessments" shall include the following:

(a) "Regular Assessment" means the amount which is to be paid by each Owner as such Owner's Proportionate Share of the Common Expenses incurred by the Community Association pursuant to the terms hereof.

(b) "Special Assessment" means: (i) a charge against a particular Owner directly attributable to such Owner to reimburse the Community Association for costs incurred in bringing the Owner into compliance with the provisions of this Declaration, the Design Standards, the Community Association Rules, or the Community Association Articles or Community Association Bylaws, (ii) any other charge designated as a Special Assessment in this Declaration, the Community Association Articles, Community Association Bylaws, the Community Association Rules or Design Standards, and (iii) attorney's fees and other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration.

1.3 "City" means the City of Manhattan, Kansas, a municipal corporation of the State of Kansas.

1.4 "Common Expenses" mean the actual costs incurred by the Community Association in conducting activities in connection with the Community for which the

Community Association is responsible pursuant to the terms hereof. Common Expenses contemplated hereby shall include, but not be strictly limited to the following:

(a) The cost of maintenance, management, operation, repair, and replacement of all areas and facilities within the Community which are maintained or operated by the Community Association;

(b) unpaid Assessments;

(c) the cost of management and administration of the Community Association including, but not limited to compensation paid by the Community Association to managers, accountants, attorneys, other professionals 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 Community Association and not individually metered or assessed by Lot), landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Community and which are provided by the Community Association;

(e) the cost of any insurance maintained by the Community Association;

(f) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Community Association;

(g) the cost of bonding which may be acquired with respect to any person handling the funds of the Community Association;

(h) taxes paid by the Community Association;

(i) costs incurred by the committees established by the Community Association, Community Association Articles, Community Association By-laws, Board or President;

(j) the costs of any other item or items to be provided or performed by the Community Association pursuant to this Declaration, Community Association Articles or Community Association Bylaws, or in furtherance of the purposes of the Community Association or in the discharge of any duties or powers of the Community Association;

(k) the cost of maintaining the Common Properties including reserves for long term repair and replacement thereof; or

(l) the common maintenance expense described as Community Association Maintenance responsibilities.

1.5 “Common Facilities” means any pond and/or grounds associated therewith, established on lands owned by the Community Association also hereinafter “Common Area.”

1.6 “Common Properties” shall include all that part of the Properties, and all improvements located thereon, owned by the Community Association for the common use and enjoyment of the Owners including the following:

(a) All paved private drives, streets and parking areas located upon real estate owned by the Community Association.

(b) All installations of central services for the benefit of more than one owner such as but not limited to television antennas, incinerators, trash receptacles, sewer lines, pipes, wires, conduits, drainage ways, drainage facilities, and other utility lines and facilities situated thereon.

(c) All easements, rights and appurtenances belonging thereto necessary to the existence, maintenance and safety of the Common Properties.

(d) All personal property owned by the Community Association intended for use in connection with the operation of Common Facilities or other facilities of the Community Association.

1.7 “Community” means the land described on Exhibit “A,” together with any Annexation Property, and the residential development thereon.

1.8 “Community Association” means the Brianna Court Townhomes Community Association, Inc., a Kansas Corporation not organized for profit.

1.9 “Community Association Articles” means the Articles of Incorporation, as such may be amended from time to time, of the Community Association.

1.10 “Community Association Board” means the elected officers of the Community Association.

1.11 “Community Association Bylaws” means the bylaws of the Community Association adopted in accordance with the Community Association Articles, as such bylaws may be amended from time to time.

1.12 “Community Association Declaration” or “this Declaration” means this Declaration and any amendments or modifications thereof.

1.13 “Community Association Member” means any Person who holds a membership in the Community Association.

1.14 “Community Association President” means the duly elected or appointed president of the Community Association.

1.15 “Community Association Rules” mean the rules and regulations adopted by the Community Association.

1.16 “Default Rate of Interest” means an annual rate of interest equal to the base rate as publicly announced by the Applicable Federal Rate from time to time while interest is accruing (with interest hereunder adjusted as and when said Applicable Federal Rate is adjusted) plus four percent (4%) per annum, but never less than eighteen percent (18%) (so that if during any periods while interest is accruing said Applicable Federal Rate plus four percent (4%) per annum is less than eighteen percent (18%) per annum, interest shall accrue during said periods at eighteen percent (18%) per annum). Notwithstanding herein to the contrary, if, during any period the highest lawful rate of interest which may be paid by the Person required to pay the Default Rate of Interest hereunder, despite the provisions hereof, is less than the rate provided above, the interest payable by such Person during said period shall be at the highest lawful rate.

1.17 “Design Standards” mean the rules, regulations, restrictions, architectural standards and construction guidelines herein designated as such and as otherwise from time to time adopted by the Design Review Committee.

1.18 “Design Review Committee” means the committee provided for herein entitled “Architectural and Landscape Control.”

1.19 “Developer” means Purple Pride Developers, Inc. a Kansas corporation, its successors and assigns, or any person to whom the Developer’s rights hereunder are hereafter assigned by the Recorded instrument.

1.20 “First Mortgage” means a Mortgage which is the first and most senior of all Mortgages upon the same property. “First Mortgagee” means the holder of a First Mortgage.

1.21 “Lot” means a tract within the Community deeded separately to an Owner within the Community as shown on the applicable Plat.

1.22 “Majority,” where not specifically designated otherwise, means at least fifty and one-tenth percent (50.1%) of the total votes entitled to be cast with respect to a given matter.

1.23 “Mortgage” means any recorded, filed or otherwise perfected instrument given in good faith and for valuable consideration (which is not a fraudulent conveyance under Kansas law) as security for the performance of an obligation, including without limitation, a deed of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.24 “Mortgagee” means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust. “Mortgagor” means the party granting the Mortgage.

1.25 “Occupant” means any Person, other than an Owner, in rightful possession of a Lot, whether as a guest, tenant or otherwise.

1.26 “Owner” means the record owner, whether one or more Persons, of fee simple title, whether or not subject to any Mortgage, to any Lot which is part of the Community, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.27 “Owner’s Proportionate Share” means a fraction, the numerator of which is the number of Lots then owned by such Owner within the Community and the denominator of which is the total number of Lots then within the Community. This Section shall be subject to the provisions preventing subdivision of any individual Lot.

1.28 “Person” means an individual, corporation, partnership, trustee or other entity capable of including title to real property, and their respective heirs, successors, and assigns.

1.29 “Plat” means collectively each plat of subdivision of the Community as Recorded in the official records of Riley County, Kansas, and as thereafter from time to time amended or supplemented.

1.30 ”Record” or “Recording” means an instrument of record in, or the act or recording an instrument with the office of the Register of Deeds of Riley County, Kansas.

1.31 “Supplemental Declaration” means a declaration of easements, covenants, conditions and restrictions, or similar instrument, annexing additional real property to the Community and subjecting such real property to this Declaration.

ARTICLE II The Declaration

Developer hereby establishes the Community and this Community Association Declaration to govern the use and occupancy of Lots within the Community.

ARTICLE III Community Association

3.1 (a) Purpose of the Community Association. The Community Association has been or will be incorporated as a corporation not organized for profit under the laws of Kansas. The Community 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 Community Association Articles, the Community Association Bylaws, the Community Association Rules or Design Standards. The Community Association shall not be deemed to be conducting a business of any kind, and all funds received by the Community Association shall be held and applied by it for the benefit of the Community in accordance with the provisions of the Community Association Declaration, Community Association Articles and Community Association Bylaws.

(b) Duties of the Community Association. In addition to the duties delegated to by the Community Association Articles and the Community Association Bylaws, and without limiting the generality thereof, the Association has the following duties:

(1) Maintenance and Management. To maintain in a safe and first class condition, manage and preserve the Common Areas and any other property not otherwise maintained by individual Owners. The Community Association has the authority to assure that property maintained by the individual Owners meets these criteria.

To maintain, manage and preserve in a safe and first class condition the Community Association landscaping areas, Common Properties, and any other area(s) for which the Community Association agrees to undertake maintenance responsibility, including the two grass medians located on Miller Parkway immediately to the east and west of the entrance to the Community.

(2) Insurance. To obtain and maintain in force appropriate policies of insurance, which shall include without limitation, directors and officers liability coverage, a comprehensive policy of public liability insurance coverage covering the Common Areas and/or Common Properties and any off-site easements owned by the Community Association 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.

(3) Rules. To make, amend and repeal the Community Association Rules.

(4) Design Review Committee; Committee Lists. To appoint and remove members of the Design Review Committee, subject to the provisions of this Declaration. To create and maintain a current list of all committees and members thereof. Such lists shall be kept at the office of either the Community Association or the Manager.

(5) Taxes and Assessments. To pay all taxes and Assessments which are or could become a lien on the Common Areas and/or Common Properties.

(6) Budgets and Financial Statements. The Community Association shall cause the financial statements for the Community Association to be regularly prepared and copies to be distributed to each Community Association Member as follows:

(1) A pro forma statement (budget) for each accounting year of the Community Association other than the first accounting year shall be proposed and adopted by the Community Association Board on an annual basis. Prior to the adoption of the budget: (a) all Community Association Members must receive notice that the Community Association Board is proposing said budget at least ten (10) days in advance; (b) a copy of the proposed budget must be available to any Community Association Member who requests it; and (c) Community Association Members must be given a reasonable opportunity to comment on the proposed budget before the Community Association Board adopts the budget. The budget shall include all

of the following: (i) a statement of estimated revenue and expenses; (ii) the total amount of cash reserves of the Community Association currently available for replacement or major repair of Common Areas and/or Common Properties and for contingencies; (iii) an itemized estimate of the current replacement costs of the remaining life of or additions to major components of the Common Areas and/or Common Properties and Community Association property for which the Community Association is responsible; and (iv) a general statement setting forth the procedures used by the Community Association Board in the calculation and establishment of reserves to defray the costs of future repair, replacement or additions to the Common Areas and/or Common Properties for which the Community Association is responsible.

(2) An annual report consisting of the following shall be distributed after the close of each fiscal year: (i) a balance sheet as of the end of such accounting year; (ii) an operating (income) statement for such accounting year; (iii) a statement of changes in financial position for such accounting year; (iv) any information required to be reported under the Kansas Corporation Code; and (v) for any accounting year in which the gross income to the Community Association exceeds Seventy-Five Thousand Dollars (\$75,000), a copy of a review of the annual report set forth in items (i) through (iii) of this paragraph, prepared in accordance with generally accepted accounting principles by an accountant licensed in the State of Kansas.

If the report referred to in the immediately preceding paragraph is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Community Association that the statements were prepared without audit from the books and records of the Community Association.

The Community Association Board shall annually distribute, prior to the beginning of each accounting year, a statement of the policies and practices of the Community Association in enforcing its remedies against Owners for defaults in the payment of the Assessments set forth herein.

The Community Association Board shall take the following actions not less frequently than quarterly: (i) cause a current reconciliation of the operating accounts of the Community Association to be made and review the same; (ii) cause a current reconciliation of the reserve accounts of the Community Association to be made and review the same; (iii) review the current year's actual reserve revenues and expenses compared to the current year's budget; (iv) review the most current account statements prepared by the financial institution where the Community Association has its operating and reserve accounts; and (v) review an income and expenses statement for the operating and reserve accounts of the Community Association.

(7) Enforcement. To perform such other acts, whether, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration, the Community Association Articles, the Community Bylaws, the Community Association Rules or Design Standards.

3.2 Membership in Community Association.

(a) Subject to provisions herein providing for Developer control, Each Owner shall be entitled to only one (1) Community Association Membership and one (1) vote in the Community Association for each Lot owned so long as the Owner is the Owner of such Lot(s), and such Owner shall specify in writing to the Community Association the name of the individual who will hold the Community Association Membership. In the absence of such written specification, Assessments shall nevertheless be charged against the Lot and Owner thereof, but there shall be no right to vote the membership. The Community Association Member must be an individual who, is either an Owner, or be an individual who is a partner if the Owner is or includes a partnership, or an officer of a corporation if the Owner is or includes a corporation, or a beneficiary of the trust if the Owner is or includes a trust, or an owner of the entity if the Owner is or includes a Person other than an individual, a partnership, a corporation, or a trust.

(b) Subject to the provisions of the preceding paragraph, once a Community Association Member has been specified by an Owner of a Lot, a new Community Association Member may only be specified for that Lot upon at least fifteen (15) days' notice prior to any meeting to the President of the Community Association; provided, however, the foregoing shall not impair the provisions of the next paragraph.

(c) A membership in the Community Association shall not be transferred, pledged, or alienated in any way, except as herein expressly provided. Subject to the provisions contained in this Section, Community Association Membership shall automatically be transferred to the new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to such Lot.

(d) Where a Lot is owned in common, either by joint tenancy or tenancy in common, each Lot ownership group will be able to designate one Member of the ownership group to vote for that Lot and no votes may be split.

(e) The Community Association Members must meet annually at a time, date and place in accordance with the Community Association Bylaws. Special meetings of the Community Association Members may be held to address any matter affecting the Community Association if the Community Association President, a Majority of the Community Association Board, or at least ten percent (10%) (or less than ten percent (10%), if set forth in the Community Association Bylaws) of the Community Association 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 Community Association 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 Community Association Bylaws; (2) any Community Association budget proposals or changes; and (3) any proposal to remove a member of the Community Association Board or an officer of the Community Association.

3.3 Pledge of Voting Rights. Notwithstanding the foregoing, in the event that an Owner has granted an irrevocable proxy or otherwise pledged the voting right appurtenant to the

Owner's Community Association Membership with respect to the Owner's Lot to a Mortgagee as additional security, the vote of such Mortgagee will be recognized only if a copy of such proxy, or other instrument pledging such vote, has been filed with the Community Association. In the event that more than one (1) such instrument has been filed, the Community Association shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves.

3.4 Assignment of Developer's Voting Rights. If any lender to whom the Developer has assigned, or hereafter assigns, as security all or substantially all of its rights under this declaration, succeeds to the interests of the Developer by virtue of said assignment as provided herein, the Developer's rights shall not be terminated thereby, and such lender shall hold the Developer's memberships and voting rights on the same terms as they were held by the Developer pursuant hereto.

3.5 Board of Directors of the Community Association.

(a) The affairs of the Community Association shall be conducted by the Community Association Board as herein provided and in accordance with the Community Association Articles and Community Association Bylaws. Each director shall be a Community Association Member or the spouse of a Community Association Member. If a director shall cease to meet such qualifications during the director's term, the director will thereupon cease to be a director and the director's place on the Community Association Board shall be deemed vacant.

(b) The members of the Community Association shall have the power and right to appoint and remove the members of the Community Association Board as provided in the Community Association Articles and Community Association Bylaws.

(c) Any member of the Community Association Board may be removed from office, by action of the Community Association members, in accordance with the following procedures: Upon the presentation to the Community Association President of a petition duly executed by thirty-four percent (34%) or more of all of the Community Association Members in favor of the removal from office of the member or members of the Community Association Board therein named, a special referendum meeting of the Community Association Members shall be promptly held to determine whether such member or members of the Community Association Board should be removed from office. Notice of such meeting shall be provided in accordance with the provisions set forth in Article III, Section 3.2(e) above, except that the proposal to remove such member or members of the Community Association 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 Community Association Members then-entitled to vote to remove such member or members of the Community Association Board from office, such member or members of the Community Association Board shall be so removed. However, the member or members of the Community Association Board being considered for removal must have a reasonable opportunity to speak at said meeting prior to the vote of the Community Association Members. Any vacancy on the Community Association Board created by the removal of a member of the Community Association Board as herein provided shall be filled by an election of

all of the Community Association Members in the manner provided in the Community Association Articles or Community Association Bylaws for the election of directors.

(d) Meetings of the Community Association Board and its committees must be open to the Community Association Members except for executive sessions of the Community Association Board, which are limited to discussions involving: (1) consultation with the Community Association's attorney; (2) litigation or related alternative dispute resolution proceedings; (3) labor or personnel matters; (4) leases, commercial transactions or purchase if information released would compromise the Community Association's position; and (5) matters that would violate the privacy of any Person. The Community Association Board must meet at least annually, always at the Community Association's location or at a convenient place for Community Association Members. Unless the Community Association Board meeting is either an emergency or in a notice previously provided to all Community Association Members, the Community Association Board must notify the Community Association Members of a Community Association Board meeting at least five (5) days in advance of such meeting. Notice of a Community Association Board meeting shall include the time, date, place and agenda of such meeting. Copies of materials distributed to the Community Association Board except for unapproved minutes or materials for executive sessions shall be reasonably made available to Community Association Members.

(e) Notwithstanding the foregoing, the Community Association Board may not perform any of the following acts: (1) amend the Declaration, except as provided by law; (2) amend the Community Association Bylaws; (3) terminate the Community Association; (4) elect a member or members of the Community Association Board except to fill vacancies on such board until the next election of members to the Community Association Board; and (5) determine the Community Association Board's qualifications, powers, duties, or terms of office.

3.6 Duties and Powers of the President of the Community Association.

(a) To the extent not prohibited by law, or as otherwise herein expressly limited, including without limitation the following paragraph, the President of the Community Association shall be empowered to exercise control over the affairs of the Community 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. The actions of the President shall at all times be subject to the review of the Board of the Community Association.

(b) Notwithstanding anything in the preceding paragraph to the contrary, the President shall not have the power to borrow any funds on behalf of the Community Association, make any expenditures on behalf of the Community Association which are, in the aggregate, more than five percent (5%) in excess of the total amount of the Community Association's budget, or increase the amount of or levy any Assessment (except a Special Assessment), without the prior approval of the elected officers of the Community Association.

(c) The Community Association President may appoint such assistants as the President deems necessary and appropriate. No compensation shall be paid to the President or

any assistant except as provided in the budget of the Community Association or as otherwise approved by the Board of the Community Association.

(d) Any right or power herein given or delegated to the Community Association President which cannot be exercised by such President, whether by reason of law, or otherwise, shall be deemed to be a right or power to be exercised by the Board of the Community Association.

3.7 President's Determination Binding. In the event of any dispute or disagreement between any Owner, Community Association Members, or any other Persons subject to this Declaration relating to the Community, or any question of interpretation, or application of the provisions, of this Declaration, the Community Association Articles or Community Association Bylaws, any Community Association Rules, or other rules of the Community Association, or any Design Standards, the determination thereof by the Community Association President shall be final and binding on each and all of such Owners, Community Association Members, or Persons. The Community Association President may, at the President's election, delegate the resolution of such dispute or disagreement, to the Community Association Board or a committee appointed by the Community Association President.

3.8 Approval of Members. Unless elsewhere otherwise specifically provided in this Declaration, the Community Association Articles or Community Association Bylaws, any provision of the foregoing which requires the vote or written assent of the Members of the Community Association shall be deemed satisfied by the following:

(a) The vote in person, or by proxy, of the specified percentage of Community Association Members entitled to vote at a meeting duly called and noticed pursuant to the provisions of the Community Association Articles or Community Association Bylaws, dealing with annual or special meetings of the Members of the Community Association.

(b) Written Consents signed by the specified percentage of Members then entitled to vote as provided in the Community Association Bylaws.

3.9 Additional Provisions in Community Association Articles and Community Association Bylaws. The Community Association Articles and Community Association Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, and Members not inconsistent with law or this Declaration.

3.10 Community Association Rules. In order to be able to address specific matters relating to the administration, operation, and development of, or other matters relating to, the Community, the Community Association Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate (the "Community Association Rules"). However, prior to adopting, amending or repealing any Community Association Rules, the Community Association Board shall notify the Community Association members of its intent and shall provide the text of the proposed Community Association Rule and the date on which the proposed Community Association Rule shall be considered. The Community Association

Rules shall not be inconsistent with the terms of this Declaration. The Community Association Rules may not unreasonably or unlawfully discriminate among Owners and Community Association Members. A copy of the Community 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 Community Association Rules shall be delivered to each Community Association Member in the same manner established in this declaration for the delivery of notice pursuant to Article XIV, Section 14.1. Upon completion of the notice requirements, the Community 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 Community Association Members, and all other Persons having any interest in, or making any use of, the Community Association, whether or not actually received thereby. After adopting, amending or repealing any Community Association Rule, the Community Association Board shall provide the Community Association Members with a copy of the text of the change. The Community Association Rules, as adopted, amended, or repealed, shall be available at the principal office of the Community Association to each Owner, Community Association Member, or other Person reasonably entitled thereto, upon request. In the event any conflict between any provision of the Community Association Rules and any provisions of this Declaration or the Community Association Articles or Community Association Bylaws, the provisions of the Community Association Rules shall be deemed to be superseded by the provisions of this Declaration or such Community Association Articles or Community Association Bylaws to the extent of any such conflict.

3.11 Indemnification. To the fullest extent permitted by law, every director, every elected officer of the Community Association, the members of the Design Review Committee, and the Developer (to the extent a claim may be brought against the Developer) by reason of its appointment, removal, or control over members of the Community Association Board or the Design Review Committee) shall be indemnified by the Community Association, and every other person serving as an employee, or direct agent of the Community Association, or direct agent of the Community Association, or on behalf of the Community Association as a member of a committee or otherwise, may, in the discretion of the Board of the Community Association, be indemnified by the Community Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon any aforesaid party in connection with any proceeding or any settlement thereof to which any aforesaid party may be a part, or in which any aforesaid party may become involved, by reason of being or having served in such capacity on behalf of the Community Association or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of the Community Association Board or the Design Review Committee whether or not such party is a director, an officer, or a member of the Design Review Committee, 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 of Directors of the Community Association shall determine, in good faith, that such officers, director, member of the Design Review Committee, other Person, or the Developer did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to

provisions of this Declaration to cover any liability exposure created by virtue of the foregoing indemnification.

3.12 Non-Liability of Officials. To the fullest extent permitted by law, neither the Developer, the Community Association President, any directors or officers of the Community Association, any Design Review Committee member, nor any other members of committees of the Community Association shall be liable to any Community Association Member or any Owner, Occupant, 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, negligence, or the like made in good faith and which the Developer, the President, any presidential assistants, any officer or any member of such committees reasonably believed to be within the scope of his duties.

3.13 Easements. The Community Association is authorized and empowered to grant upon, across, or under real property owned or controlled by the Community 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.

3.14 Accounting. The Community Association, at all times, shall keep, or cause to be kept, true and correct records of account on a cash basis, and shall have available for the inspection of all Owners at reasonable times during regular business hours, books which shall specify in reasonable detail all expenses incurred and funds accumulated from Assessments or otherwise.

3.15 Records. The Community Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Owner and Community Association Member the books, records (including but not limited to minutes of meetings), and financial statements of the Community Association together with current copies, as amended from time to time, of this Declaration and the Community Association Articles, Community Association Bylaws, Community Association Rules, and Design Standards. The Community Association shall retain copies of the following records for a period of five (5) years: (a) all receipts and expenditures; (b) minutes of all meetings except for executive sessions of the Community Association Board; (c) names of all Owners and/or Community Association Members, in alphabetical order, with addresses; (d) the Declaration, Community Association Bylaws and Community Association Rules; (e) names and addresses of current members of the Community Association Board; (f) the Community Association's most recent annual report, if any; (g) copies of current contracts to which the Community Association is a party; (h) records of architectural approvals, if any; and (i) ballots, proxies and other records relating to voting by Community Association Members for one (1) year after the election, action or vote to which they pertain. The Community Association must also retain copies of all financial statements and tax returns of the Community Association for a period of five (5) years. Notwithstanding the foregoing, the Developer shall be under no obligation to make its own books and records

available for inspection by the Community Association, or any Owner, Community Association Member, or other Person.

3.16 Managing Agent. Any powers, duties, and rights of the Community Association created pursuant hereto, or of the Community Association President, or Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Community Association of its obligation to perform any such delegated duty. Any agreement for professional management, or any other contract providing for services, shall not exceed a term of three (3) years, which term may be renewed by agreement of the parties for successive one-year periods, and shall further provide for termination by either party with or without cause and without payment of a termination fee upon ninety (90) days' prior written notice.

3.17 Developer's Control of the Community Association. Notwithstanding anything in this Article or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Community Association and the Design Review Committee, including appointment and removal of the President and all other officers of the Community Association, all directors of the Community Association Board and all members of the Design Review Committee, until (i) 95% of the Lots in the Community (as the Community exists from time to time) have been sold to third parties and (ii) Developer owns less than two (2) acres of the following described land: Lots 1, 2, 6A, 6B, 7A and 7B, the townhomes at Miller Ranch, Unit Two a residential planned unit development in the city of Manhattan, Riley County, Kansas, described on Exhibit "B" attached hereto and by reference made a part hereof. Until such time, only the developer will be entitled to cast any votes with respect to the election and removal of Community Association officers or directors and members of the Design Review Committee, or any other matter requiring the vote or approval of Community Association Members. The Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Section.

3.18 Mediation and Binding Arbitration. In the event of a dispute with the Community Association President's decision as elsewhere provided herein, between one (1) or more of the Owners, Community Association Members, the Community 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 Community 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 Board of Directors of the Association. 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.

3.19 Community Association Maintenance Responsibility. The Community Association shall be responsible for and have an easement to perform certain maintenance on and beside all Lots as described in this section. All maintenance on a Lot not described in this Section as specifically a Community Association Maintenance Responsibility will remain a responsibility of the individual Lot Owner. Community Association Maintenance Responsibility includes the following:

(a) Yard Maintenance. The Community Association shall mow the grass planted in common areas and on each Lot. The Community Association shall trim and maintain all trees, shrubs and plantings. The cost of such maintenance shall be an additional Assessment as to said Lot and shall be added to the Regular Assessment to which said Lot is subject and unless paid by or on behalf of said Owner within thirty (30) days of the written demand therefore, shall be enforceable and secured by a lien as in the case of said Regular Assessment.

(b) Trash and Snow Removal. The Community Association may contract with the City or private contractors, as required, for the weekly pickup of trash at each Lot and the Common Facilities and the timely removal of snow and ice from the common paved areas and private driveways of each Lot in the Community. The Community Association's obligations to remove snow shall commence at such time as the snow accumulation exceeds two inches (2"). Charges for these services shall be paid out of Regular Assessments.

(c) Easements.

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

(a) An easement to keep, maintain, restore, repair and replace any such utility lines over, under and across any of the Common Facilities, the Community, or the Lots for the purpose of maintaining, restoring, repairing, or replacing any utility lines, and for the purpose of reading any meter installed with respect to any utility line.

(b) If, in order to maintain, restore, repair or replace the utility line that serves any one Lot, it becomes necessary to break through walls, excavate or otherwise damage a Lot, the Common Facilities, or the Community entered, the damages caused by such entry shall be required and the Lot, the Common Facilities, or the Community entered into shall be restored to substantially the same condition as prior to such damage, as a Common Expense of the Community Association, payable out of the Regular Assessment; unless, however, the need for such maintenance, restoration, repair or replacement was caused through the willful or negligent act of an Owner, the Owner's family, guests or invitees, in which event the cost of such maintenance or repairs shall be added and become an additional Assessment to such Owner. Expenses applicable to removal of obstructions in a sewer line from the connection and with a

main by a private line to a Lot, however, shall be assumed and aid by the Owner of such Lot and shall not be a common expense payable by the Community Association out of the Regular Assessment.

(c) If it becomes necessary to maintain, restore, repair, or replace utility lines which serve more than one Lot, then the cost of such maintenance, restoration, repair or replacement to its former condition shall be a common expense payable by the Community Association out of the Regular Assessment.

(2) Easements for Minor Encroachments. Each Lot and all improvements constructed upon the Common Properties shall be subject to an easement created by the construction of any overhang of the structures built by Developer. A valid easement for said encroachment and for the maintenance of same, so long as the structure stands, shall and does exist. In the event any such improvements are partially or totally destroyed and then rebuilt, the Community Association and the Owners of each Lot agree that valid easements shall exist for any encroachment therefrom.

(3) Blanket Easement. There is hereby created a blanket easement upon, across, over and under all the Lots and Common Properties for ingress and egress, installation, operation, replacing, repairing and maintaining utilities, including but not limited to water, sewer, telephone, television, CATV cables, electricity, gas, for drainage facilities and floodway purposes, together with the right to remove any obstruction that may be placed in such easement area that would constitute interference with the use of such easement, or with the use, maintenance, operation of installation of such utilities, drainage and floodway courses. By virtue of this easement, it shall be expressly permissible for the utility companies or Developer to affix and maintain pipes, wires, conduits or other service lines on, above, across and under the roofs and exterior walls of the Lots. Notwithstanding anything to the contrary contained in this paragraph, or in this Declaration, no sewer, electrical line, water line or other utilities may be installed or relocated upon the Common Properties or the Lots until approved by Developer so long as Developer owns any of the Properties and thereafter by the Board of Directors of the Community Association. Neither Developer nor any utility company or other authorized entity using the easements shall be liable for any damage done by them, their employees or agents, to shrubbery, trees, flower or other improvements located on the land covered by said easements. The Owners of the respective Lots shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property, which are utilized for or serve other Lots, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his Lot. Irrespective of the terms of this paragraph, no pipe, wire conduit or other service line which services any other unit shall be authorized to run under a unit.

(4) Easement for Ingress and Egress. Developer hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Community Association, its successors and assigns, for the benefit of each Lot Owner, an easement for ingress and egress to each Lot over and across each Lot and all of the Common Properties and all recreational and other Common Facilities.

(5) Community Association Easement. Developer hereby establishes and reserves to itself, its successors and assigns, an easement over, under and across, all of the Properties and the Common Properties subject to this Declaration, for the benefit of each Lot Owner, for the purposes of executing any of the powers, rights or terms of this declaration, or the Articles of Incorporation and By-Laws of the Community Association.

(d) No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any of the Common Properties and all recreational and other Common Facilities by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any said Common Properties and all recreational and other common facilities.

ARTICLE IV Creation of Lien and Personal Obligations

Each Owner, by acceptance of a deed or other conveyance of an interest in a Lot, is deemed to covenant and agree to pay all of the following to the Community Association in accordance with the terms hereof: Regular Assessments and Special Assessments. Such Assessments shall be collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late charges, attorneys' fees, and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Owner's Lot against which the Assessments are made. Each Assessment, together with such interest and other costs, shall also be the personal obligation of the Owner to whom such Assessment relates. The personal obligation for delinquent payments shall not pass to an Owner's successor unless expressly assumed by the Owner's 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 Lot shall be joint and several.

4.1 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the Community Association shall be used: (a) to promote the health, safety, and welfare of Owners; (b) to enhance the value of the Community; (c) to pay the costs of administration of the Community Association; (d) to pay all other Common Expenses; (e) to establish reasonable reserves; (f) to pay the costs associated with maintenance and repair of landscaping and lawn areas installed by the Developer within the landscape easements as defined on the Plat and within center islands within public right of way; or (g) to otherwise further the interests of the Community. Where a Lot has separate gas, electrical, sewer, or other similar utilities service, the cost of the same shall be the personal obligation of each Owner. Maintenance of sewer lines serving a Lot shall be the responsibility of its Owner.

4.2 Regular Assessments.

(a) Except as otherwise specifically provided herein, each Owner of a Lot shall pay as its Regular Assessment its Proportionate Share of the Common Expenses. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such

amounts and at such times as may be provided in the Community Association Articles or Community Association Bylaws, or as determined by vote of the Community Association.

(b) The Community Association shall at the time of budget adoption determine the amount of the Regular Assessment to be paid by each Owner and thereafter notify the Owner thereof. Each Owner shall thereafter pay to the Community Association its entire Regular Assessment as determined on or before the beginning of the Community Association's fiscal year, which date shall be set forth in the written notice sent to Owners. The Community Association fiscal year will be a calendar year ending December 31 each year. The bylaws may provide for quarterly or monthly payment of dues upon vote of the Community Association Board.

(c) If the Community 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, including Common Expenses in excess of the estimated Common Expenses used in preparation for the Community Association's budget for that year, the Community Association President shall then determine the approximate amount of such inadequacy and, with the consent of the Community Association Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. Each Owner shall be notified at least thirty (30) days in advance 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 estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses, the Community Association may, at the discretion of the Community Association Board, retain such excess as additional working capital, reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity, or quality, or services upon which the Common Expenses for the year in question are based, and if supplemental Assessments are required, they shall be made as set forth above.

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

(a) Costs incurred in bringing an Owner or the Owner's Lot into compliance with the provisions of this declaration, the Community Association Articles, Community Association Bylaws, or the Community Association Rules.

(b) Fines levied or fixed by the Community 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 Community Association Articles or Community Association Bylaws, or the Community Association Rules.

(d) Any other charge designated as a Special Assessment in this Declaration, the Community Association Articles, Community Association Bylaws, or the Community Association Rules.

The Community Association Board may propose and adopt a Special Assessment at any time, but all Community Association 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 Community Association Member who requests it. Community Association Members must be given a reasonable opportunity to comment on the Special Assessment before the Community Association Board takes action to adopt a Special Assessment.

4.4 Uniform Assessment. All Regular Assessments imposed upon an Owner shall be based upon such Owner's Proportionate Share. However, Special Assessments need not be uniform in amount to all Lots, but shall be proportionate to the costs incurred for the individual Lot.

4.5 Exempt Property. All properties dedicated to and accepted by, or otherwise owned or acquired by, a public authority shall be exempt from the Assessments created herein. All property owned by the Developer will be exempt and no payment of expense or assumption of Community Association duties by the Developer in one (1) year shall create an implied duty to pay such expense in succeeding years.

4.6 Date of Commencement of Regular Assessments. The Regular Assessments shall commence as to each Lot and that Lot's Owner on the date a Lot is first deeded from the Developer. The Regular Assessment shall be equitably adjusted as required for short periods.

4.7 Time and Manner of Payment; Late Charges and Interest. Assessments shall be due and payable by Owners as specified above and otherwise in such manner and at such times as the Community Association shall designate in accordance with the terms hereof. If not paid within ten (10) 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 at the Default Rate of Interest until paid. The Community Association may, in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A delinquent Owner shall, to the extent allowed by then applicable law, be liable for attorneys' fees and other related costs incurred by the Community Association as a result of such delinquency, and if any suit, action, or proceeding is brought to collect any such Assessment or charge, then there will be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

4.8 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, including, without limitation, a claim that: (a) the Community Association, its Board, its President, or the Developer is not properly exercising its duties and powers as provided in this Declaration or documentation associated therewith; (b) an Owner has performed

any duty or paid any debt of the Community Association; or (c) Assessments for any period exceed Common Expenses.

4.9 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 (whether such liens are now in existence or are created at any time in the future), 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.

4.10 Reserves. Reserves included in any budget for Common Expenses which are collected as part of Regular Assessments shall be deposited by the Community Association in a separate account to be held in trust for the purposes for which they are budgeted and are to be segregated from and not commingled with any other funds of the Community Association, except to the extent that the Community Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws (tax or otherwise) of the State of Kansas or the United States relating to corporations not organized for profit, or homeowners associations. Such reserves shall be deemed a contribution to the capital account of the Community Association. The responsibility of the Community Association Board whether while controlled by the Developer or the Members of the Community Association shall be only to provide for such reserves as such Board in good faith deems reasonable, and neither the Developer, such Board or any member thereof shall have any liability to the Community Association or any Owner, Community Association Member, if such reserves prove to be inadequate. Individual Owners have no right, title or interest in or to the Reserves or any Proportionate Share thereof. In the event of termination of the Community Association, then all Reserves will be disbursed in accordance with the rules of the Internal Revenue Service with respect to not-for-profit corporations.

4.11 Subordination of Lien. Any lien which arises against a Lot by reason of the failure or refusal of an Owner to make timely payment of any Assessment shall be subordinate to the lien of a prior recorded First Mortgage (together with any interest, cost, reasonable attorneys' fees and any late charge related thereto) on the Lot, acquired in good faith and for value, except for the amount of the unpaid Assessment which accrues from and after the date on which a First Mortgagee comes into possession of, or acquires title to the Lot, whichever occurs first. If any lien for unpaid Assessments has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Assessments arising prior to the aforesaid date and, upon written request by such First Mortgagee to the Community Association, such lien shall be released in writing by the Community Association. Any unpaid Assessments which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Owner even though re-allocated by the Community Association among all other Owners as part of the Common Expenses. However, any Assessments accruing after the date title is transferred to a Mortgagee will be a debt of the Mortgagees in possession in the same fashion as any other Owner.

4.12 Certificate of Non-Payment. Any person acquiring an interest in any Lot shall upon request be entitled to a certificate from the Community Association setting forth the

amount of due but unpaid Assessments relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Assessments which occur, or become due, after the date of the certificate, and any interest, costs, attorneys' fees, and any late charges related to such unpaid Assessments.

4.13 Enforcement of Lien. Any lien provided for in this Article may be foreclosed by the Community Association in any manner provided, or permitted, for the foreclosure of realty mortgages in the State of Kansas. All of the provisions of this Article relating to the enforcement of any lien provided for herein (including without limitation the subordination provisions provided herein) shall apply with equal force in each other instance provided for in this Declaration or the Community Association Rules or the Community Association Articles or Community Association Bylaws, wherein it is stated that payment of a particular Assessment, charge or other sum shall be secured by a lien. Nothing herein shall be construed as requiring that the Community Association take any action allowed hereunder in any particular instance, and the failure of the Community Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time, or in a different instance.

4.14 Pledge of Assessment Rights as Security. The Community Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligation of the Community Association; provided, however, any such action shall require the prior affirmative vote, or written assent, of the Developer, if it controls the Community Association, or otherwise, a majority of all the Members of the Community Association. The Community Association's power to pledge its assessment powers shall include, but not be limited to the ability to make an assignment of Assessments which are then payable to, or which will become payable to the Community Association, which assignment may then be presently effective but shall allow said Assessments to continue to be paid to the Community Association and used by the Community Association as required, unless and until the Community Association shall default on its obligations secured by said assignment.

ARTICLE V Insurance

5.1 Individual Units. Each Owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the unit, excluding land, foundation, or excavations. Each Owner shall cause the Community Association to be shown as an additional insured on such policies owned by an Owner, and will furnish to the Community Association a certificate of insurance displaying the coverage required of an Owner under the terms of this paragraph. Such insurance shall provide for payment of the losses thereunder by the insured to the Association or its nominees, insurance trustee for the benefit of each owner, the holder of each first mortgage or record thereon and the Association as their interest appears. Proceeds received by the insurance trustee shall be used to repair, reconstruct or rebuild the townhouse units damaged or destroyed by fire or other casualty unless all townhouse unit owners and their first mortgagees agree in writing not to repair, reconstruct or rebuild. The Board of Directors of the Association may obtain and maintain such insurance under one blanket fire and extend coverage policy providing insurance for all owners and first mortgagees of townhouse units as their interests may appear pursuant to this declaration. In such

event, the insurance premium shall be common expenses to be paid as set forth herein. In such event each Owner shall be furnished a memorandum of insurance coverage approved by the Commissioner of Insurance setting forth the essential coverage of the blanket policy. Provision for such blanket insurance shall be without prejudice to the right of each Owner to insure his or her own townhouse unit under a separate policy if benefits thereunder are payable to the Association or its nominee, as insurance trustee for the benefit of the Association and all Owners and their first mortgages as their interest may appear.

ARTICLE VI

Maintenance, Repairs and Replacements

6.1 Maintenance by Owner. Owner acknowledges that the Owner's Lot is subject to zoning requirements and landscaping and development policies of the City. In order to preserve the natural beauty of the property as a rural environment, each Owner shall be responsible for compliance with all applicable development guidelines and policies of the City.

Except as otherwise provided in this Declaration, each Owner shall maintain all improvements on such Owner's Lot in a clean and attractive condition. Without limiting the generality of the foregoing, each Owner shall: (a) keep Owner's Lot free from rubbish, litter and noxious weeds; (b) maintain, cultivate and keep in good condition and repair, all shrubs, trees, grass, lawns, plantings and other landscaping originally located or from time to time placed on such Owner's Lot, including any indigenous vegetation located on said Lot; (c) maintain in good condition and repair and adequately paint or otherwise finish all drainage improvements located or from time to time placed upon such Owner's Lot; (d) maintain all paved surfaces and keep them clean, reasonably dry and free of petroleum, petroleum byproducts, fuel and other extraneous substances; and (e) maintain in good condition and repair all slope areas upon such Owner's Lot. Except for the removal of dead or diseased plants, no Owner shall remove, replace or alter any trees, plantings or vegetation without the prior written consent of the Community Association.

6.2 Right of Access. An authorized representative of the Community Association and all contractors, repairmen or other agents employed or engaged by the Community Association, shall be entitled to reasonable access to each of the Lots as may be required to perform any of the Community Association's responsibilities hereunder.

ARTICLE VII

Architectural and Landscape Control

7.1 Design Review Committee. The Community Association shall have a Design Review Committee consisting of not less than three (3) nor more than five (5) persons, as specified from time to time by the Developer during periods in which the Developer has the right to appoint the members of the Design Review Committee, and thereafter, by resolution of the Board of the Community Association. The Developer shall retain the right to appoint, augment or replace all members of the Design Review Committee for the Community until (i) ninety-five (95%) of all Lots within the Community (as it may exist from time to time) have been sold to third parties and (ii) Developer shall own less than two acres of land in the following described

land: Lots 1, 2, 6A, 6B, 7A and 7B, the townhomes at Miller Ranch, Unit Two, a residential planned unit development in the City of Manhattan, Riley County, Kansas. Thereafter, members of the Design Review Committee shall be appointed by the Board of the Community Association. Persons appointed to the Design Review Committee, other than those Persons appointed by the Developer, must be Community Association Members. The Developer may voluntarily (but not be required to) permit Community Association Members to appoint or replace one or more members of the Design Review Committee at any time.

7.2 Establishment of Design Standards. Developer is constructing all townhome units in the subject development. Developer shall be exempt from the requirement of seeking approval of new construction. The units as completed by Developer shall be the design standards. All subsequent improvements or renovations shall require prior approval by the Design Review Committee.

7.3 Specific Issues.

(a) HVAC. No window or wall air conditioning or heating units will be permitted. All HVAC units will be screened from view of the street and other Lots.

(b) Patios. No screening of a patio or other recreation area will be installed without the written approval of the Design Review Committee.

(c) Swimming Pools, Outside Recreation Equipment, and Tennis Courts. There shall be no pools (above-ground or otherwise) or tennis courts. All recreation equipment including, but not limited to, basketball goals, will be located in the rear yards only and screened from view of the street or from other Lots. All recreational equipment and the screening therefor must be approved by the Design Committee.

(d) Fences and Walls. Fences are not permitted because they fragment the landscape of the Community. Privacy screens may be permitted by the Design Review Committee around patios so long as the Design Review Committee determines that the materials and design are in harmony with the house but in no instance shall such screens penetrate the building set back lines. Retaining walls shall be made of natural materials or faced with quality materials approved by the Design Review Committee.

(e) Mailbox. The Association shall employ the use of cluster mailboxes for each unit. Maintenance of the cluster mailbox facility shall be considered to be a Common Expense of the Association. No other mailboxes are permitted.

7.4 Review Process of Improvements and Renovations.

(a) Signed plan approval by the Design Review Committee is required prior to the undertaking of any site improvements, construction or installation, including clearing, paving, signs, structures, landscaping, building additions or alterations, and subdivisions. Review should be coordinated with the required governmental approvals. Submission to the City for building permits or site plan approval should not be made until final plans have been

approved by the Design Review Committee. All submissions to the Design Review Committee are to be made within the time periods established by the Design Review Committee and shall be in triplicate on forms or in a format approved by the Design Review Committee. One copy shall be retained for the Design Review Committee for its files and two (2) copies returned to the Owner for Owner's use in obtaining City approval (i.e. building permits). The review of each submission by the Design Review Committee will be carried out within twenty (20) working days from the date of each submission; and notification of recommendations or approval will be provided in writing to the Owner at that time. Each Owner and/or such Owner's architect and/or builder may be required to attend a pre-design conference with one or more member(s) of the Design Review Committee, if requested by the Design Review Committee, to review the intent of the Owner's proposed design. The time line for approval does not begin until the pre-design conference is held if it is requested.

7.5 Design Review Committee Authority and Limits of Liability.

(a) The Design Review Committee may delegate its plan review responsibilities, except final review and approval as may be required by such Design Standards, to one or more of its members or architectural consultants retained by the Design Review Committee. Upon such delegation, the approval or disapproval of plans and specifications by such member of consultants shall be equivalent to approval or disapproval by the entire Design Review Committee.

(b) The address of the Design Review Committee shall be the address established from time to time by resolution of the Community Association. Such address shall be the place for the submittal of plans and specifications.

(c) The establishment of the Design Review Committee and Design Standards shall not be construed as impairing the obligation of any Owner to maintain or repair the Owner's Lot as may otherwise be specified in this Declaration, the Community Association Rules or Community Association Articles or Community Association Bylaws.

(d) No residence or improvement of whatever type shall be commenced, reconstructed, erected or maintained within the Community, nor shall there be any addition to or change to the exterior of any residence, or other structure or improvement upon a Lot, or the landscaping, grading, or drainage thereof, including, without limitation, the painting (other than painting with the same color of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the Design Review Committee. The Design Review Committee may reject plans and specifications, without citing specifics, for the following reasons, among others: (i) insufficient information to adequately evaluate the design or its intent; (ii) poor overall design quality, (iii) incompatible design elements; (iv) inappropriate design concept or design treatment; (v) a design found to have an adverse effect on the character of the Community or its residents. In recognition of the fact that the overall impact of improvements on any Lot involves issues of taste and judgment which cannot be completely reduced to Design Standards, the Design Review Committee shall also have the right to reject plans and specifications conforming to the Design

Standards if the Committee believes that the overall aesthetic impact of any proposed improvement, addition, alteration or change is detrimental to the Community.

(e) By its approval of plans and specifications, the Design Review Committee shall not be deemed to have approved the same for engineering design, or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Community Association, any of its Members, its officers, its Board nor the Developer assumes any liability or responsibility therefore, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Community Association, its officers, its Board nor the Developer shall be liable to any owner or other Person for any damage, loss or prejudice suffered or claimed on account of: (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (ii) the construction or performance of any work, whether or not pursuant to approved plans, drawings, and specifications, (iii) the development, or manner of development, of any property within the Community, or (iv) the execution of filing of any estoppels certificate, or otherwise, whether or not the facts therein are correct; provided, however, that such action, on the basis of the actual knowledge possessed by the Person in question, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans for specifications comply with applicable governmental ordinances and regulations including, but not limited to zoning ordinances and building codes.

(f) Any member or authorized consultant of the Design Review Committee, the Developer or its representatives, or any authorized officer, director, employee or agent of the Community Association, may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot, after reasonable notice to the Owner, in order to inspect improvements constructed or being constructed on such Lot to ascertain that such improvements have been or are being, built in compliance with the plans and specifications approved by the Design Review Committee, the Design Standards, and this Declaration. The Design Review Committee shall cause such an inspection to be undertaken within a reasonable time (not to exceed sixty (60) days) of a request therefore from any Owner as to his Lot which request shall contain an affirmative statement by such Owner of such Owner's good faith belief that such Owner is in compliance with the approved plans and specifications, the Design Standards and the other provisions hereof. If such inspection reveals that the improvements located on such Lot have been completed in compliance with the plans and specifications as approved by the Design Review Committee, the Design Standards and the other provisions hereof, the design Review Committee shall provide to such Owner a notice of such approval in recordable form which, when Recorded, shall be conclusive evidence of compliance with the provisions of the approved plans and specifications and the Design standards as to the improvements described in such recorded notice, but as to such improvements only.

(g) The Community Association may promulgate such rules and regulations as it deems to be appropriate and with respect to construction undertaken without approval or improvements or construction which is not in compliance with this Declaration in order to enforce compliance of the Design Standards set forth herein. **WITHOUT LIMITING THE**

GENERALITY OF THE PRECEDING SENTENCE, THE COMMUNITY ASSOCIATION BOARD MAY FIX A FINE OF UP TO TEN THOUSAND DOLLARS (\$10,000) FOR FAILURE TO OBTAIN ANY REQUIRED APPROVAL FROM THE DESIGN REVIEW COMMITTEE OR TO COMPLY WITH ANY SUCH APPROVAL.

7.7 Public Approvals. All pertinent requirements of public agencies shall be followed in the development of the Lot, and all plans must be approved by the appropriate departments of the City and/or County. Each Owner must verify code requirements at the time of purchase and development. Although based in part on local zoning and subdivision regulations, the Design Standards may be more restrictive in land use, site development standards, landscape requirements, or in other matters. In every case in which the Design Standards or approvals given by the Design Review Committee are at variance with public agency requirements, the more restrictive regulations shall govern. Final legal approvals permitting development and occupancy of the property will be made by the appropriate governmental unit.

7.8 Waiver. The approval or disapproval by the Design Review Committee of any plans, specifications, drawings, grading plans, heights, or any other matters submitted for approval or consent shall not be deemed to be a waiver by the Design Review Committee of its right to approve, disapprove, object or consent to any of the features or elements embodied in other plans, specifications, drawings or other matters submitted to the Design Review Committee.

7.9 Liability. Neither the Community Association, Community Association Board, Design Review Committee, nor any of the Members or professional employees shall be responsible for any defects in any building, structure or other improvement erected, constructed, installed, placed, altered or maintained in accordance with or pursuant to any plans and specifications, color scheme, or other material approved by them or any conditions or requirements that they may have imposed with respect thereto, nor shall the Community Association, Community Association Board, Design Review Committee, nor any of the Members or professional employees have any liability for the inability of anyone to obtain a building permit for the construction or alteration of any dwelling, building or other improvement pursuant to plans and specifications approved by the Community Association.

ARTICLE VIII Use and Occupancy Restrictions

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

8.1 Residential Use. No part of any Lot shall be used for other than private residential and ancillary purposes. The foregoing restrictions shall not be construed in such manner as to prohibit an Owner from (a) maintaining a personal professional library therein, (b) keeping personal business or professional records or accounts therein, (c) handling personal business or professional calls or correspondence, (d) building and maintaining a swimming pool and other residential recreational facilities located on the Owner's Lot, (e) operation of one or more dwellings as a model home by Developer and/or the maintenance of an office at such

model home, or (f) undertaking any other activity not otherwise prohibited by this Declaration when such activity has been expressly approved in advance by the Community Association Board.

No Owner shall create undivided interests or any other interests in such Owner's Lot for time sharing or similar commercial purposes. During any one (1) year period, no Lot and/or dwelling thereon shall be leased for more than a total of ninety (90) days or leased more than twice.

An in-home business having appropriate City permits with not more than one outside employee and not more than one customer car on premises at any one time is permitted. No signs or external evidence of conduct of business are permitted.

8.2 Signs. No permanent or temporary sign of any kind shall be displayed to the public view, or from any Lot, without the approval of the Community Association or the Design Review Committee, except for the following temporary signs ("Permitted Signs"): (a) such signs as may be used by Developer in connection with the development of Lots in the Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; or (c) such signs advertising the Lot as being for sale. Permitted signs shall not exceed one sign at a time and not more than five (5) square feet per sign face with not more than two (2) sided signs or be more than three feet in height.

8.3 Animals. No animals, including, but not limited to, livestock, birds, fish or poultry of any kind, shall be raised, bred or kept within any Lot, except as approved by the Developer or the Community Association and subject to applicable City ordinances. Dogs, cats, tropical birds or such other typical household pets approved by the Community Association Board may be kept on the Lots; provided, (a) such pets are not kept, bred or maintained for any commercial purposes and (b) for any Lot, the maximum number of dogs shall be two (2) and the maximum number of all animals shall be three (3). Each and every dog and cat must carry an identification tag which contains the address of the Owner of same.

Each and every Owner (or other person in care of any dog) shall at all times when walking such dog, carry appropriate feces collection and disposal equipment (pooper scooper). Each and every Owner of any pet shall immediately clean, remove and dispose all animal waste materials (such as dog defecation), and shall dispose of the same on such Owner's Lot. No Owner shall allow any pet to be or run at large unless such pet is securely restrained by a substantial leash not exceeding twenty (20) feet in length and is in the charge and control of a person competent to keep such pet under effective control. No pet which engages in excessive barking or other noise making which results in any annoyance to residents in the area may be kept in or upon any Lot. Each and every Owner of a pet shall be liable to each and all other Owners, their families, guests and invitees, and to the Community Association for any and all damage to person or property caused by any pet(s) brought upon or kept upon any Lot or the Common Areas and/or Common Properties by such Owner, members of such Owners family, guests or invitees. Each and every Owner shall comply with Community Association Rules governing the keeping of pets. Buried lines for shock collars and/or chaining of dogs are not

permitted. Animal “runs,” kennels or enclosures purely for the confinement of animals are not permitted.

8.4 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within the Owner’s Lot, or on, or about, any portion of the Community, which will obstruct or interfere with the rights of other Owners, Occupants, or Persons, or annoy them by unreasonable noises, or otherwise, nor will any Owner commit, or suffer any illegal act to be committed therein. Each Owner shall comply with the Community Association Rules and the requirements of all health authorities and other governmental authorities having jurisdiction over the Property.

8.5 Power Tools. No power tool shall be used outside of any dwelling between the hours of the later of 6:00 p.m. or sunset and 6:30 a.m., except in an emergency, and no tool shall be used which causes unreasonable noise or potential interference with cable TV and satellite reception.

8.6 Vehicles. Vehicles must be stored or housed in the garage on a regular/permanent basis. Vehicles may be parked or stored on the driveway temporarily; but this practice is discouraged on a regular/permanent basis unless approved by the Community Association. No mobile home, recreational vehicle, commercial vehicle, vehicle displaying any commercial sign, trailer of any kind, truck, motorcycle, any vehicle not licensed for general road use, four wheel drive, jeep-like, all-terrain vehicles, or any camper or boat shall be kept, placed, parked, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed or repaired, upon any Lot or street in such a manner as will be visible from the neighboring property or to the users of any street. No stripped down, partially wrecked or junk motor vehicle, or sizable part thereof, shall be permitted to be parked on any private street, any Lot or any other portion of the property in such a manner as to be visible to the Occupants of other Lots or to the users of any private street or neighboring property.

8.7 Lights. No spotlights, flood lights, or other lighting, shall be placed or utilized upon any Lot in a manner which unreasonably interferes with the enjoyment of adjoining Lots. All exterior lighting shall have a concealed energy source and a white color within the range of 2700° to 4500° K. Golden, yellow, blue or reddish colors are not permitted. No exterior lighting shall be installed or maintained on any Lot without the approval of the Design Review Committee.

All houses must have and maintain in continuous operation at least 120 watts or equivalent lighting in the front yard. Such lights must be installed in operable condition on or before the construction is completed on the Lot, and if electric, such lighting shall be controlled by a photoelectric cell and operated from dusk to dawn.

Holiday lights shall not be lit before Thanksgiving or after New Year’s Day. Lights and decorations may be lit between 5:00 P.M. and 10:30 P.M. Holiday lights shall be taken down by February 15 of the following year, or as weather permits.

8.8 Antennas. No external radio, television or other antennas of any kind or nature (including, but not limited to “satellite dishes”) or other device for the reception or transmission

of radio, microwave or other similar signals, shall be placed or maintained upon any Lot without the prior approval of the Design Review Committee. All such structures approved by the Design Review Committee shall be to the extent possible screened or camouflaged from the view of adjacent properties. The Design Review Committee will examine the proposed location and color of any such antennas or device to ensure its appropriateness and harmony with the Community.

8.9 Garbage. No garbage or trash shall be kept, maintained or contained in any Lot so as to be visible from another Lot. No incinerator shall be kept or maintained on any Lot. No refuse pile, garbage or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot. Trash should be placed in such designated locations and containers as may be established from time to time in the Design Standards.

8.10 Mining. No portion of the Community shall be used in any manner to explore for or remove any water, oil or other hydrocarbons, or minerals of any kind, or earth substance of any kind.

8.11 Safe Condition. Without limiting any other provision in this Article, each Owner shall maintain and keep the Owner's Lot at all times in a safe, sound and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other owners of their respective Lots. All improvements on a Lot which are damaged by or destroyed by fire or other casualty shall be repaired and restored by the Owner thereof with due diligence.

8.12 Basketball Goals. No basketball goals will be permitted unless the Design Review Committee and Association Board both approve. All such devices are otherwise subject to the approval of the Design Review Committee as to design, materials and location and Community Association Rules regulating their location, construction, and screening.

8.13 Clothes Drying Area. No portion of any Lot outside the structure located thereon shall be used as a drying or hanging area for laundry of any kind, it being the intention hereof that all such facilities shall be provided within the buildings to be constructed on each Lot. Clothes racks or hangers may be used on the screened-in porch or on the lower patio.

8.14 No Further Subdivision. No Lot shall be divided and/or subdivided.

8.15 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on the Plat, or other binding document, as a "drainage easement." This restriction will also apply to any area which, although not a specified drainage easement, which has been intentionally contoured to facilitate drainage, except that, with the prior consent of the City and the Design Review Committee, nonpermanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

8.16 Outbuildings Prohibited. No building or other detached structure may be erected on any Lot without the consent of the Design Review Committee.

8.17 Swimming Pools. No swimming pools shall be allowed on any Lot.

8.18 Storage Tanks. No exterior storage tank for fuel or anything else shall be allowed on any Lot.

8.19 Garage Doors. Each garage shall be equipped with an automatic garage door apparatus to open and close the garage door. Garage doors shall be kept closed except when opened for the removal or the parking or replacing of a vehicle or other item from the garage. A garage shall not be used as or converted to a residence/living space.

8.20 Rental of Lots. Intentionally omitted.

8.21 Solar Panels. Solar panels shall not be erected on any Lot without the prior written consent of the Design Review Committee, and in no event shall any solar panel be visible from or face any street.

8.22 Lawn Ornamentation. No lawn ornaments of any kind are permitted in yards visible from any street unless approved by the Design Review Committee as to location, screening, and in form such that they are consistent with the design of the home and neighborhood.

8.23 Enforcement. The Community Association, or its authorized agents, may, but is not required to, enter any Lot on which a violation of these restrictions exists and may correct such violation at the expense of the Owner of such Lot. Such expenses, and such fines as may be imposed pursuant to this Declaration or the Community Association Rules shall be a Special Assessment secured by a lien upon such Lot enforceable in accordance with the provisions of this Declaration. The Community Association or other Owners of Lots are not limited to the remedy of correction and all remedies described in this Declaration and all other rights and remedies available at law or equity shall be available in the event of any breach by any Owner, Occupant or other Person of any provision of this Article.

8.24 Modification. The Community Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Community and the Lots by reasonable rules and regulations of general application within the Community adopted by the Community Association Rules.

8.25 Flow of Traffic and Parking. Brianna Court is encouraged to be a one-way street which is entered by veering to the right and traffic will move in a counter-clockwise direction. Parking shall only be permitted on the right side of the street adjacent to the sidewalk. Mail delivery shall be completed in a clockwise manner as required by the United States Postal Service.

8.26 Gardens. The Association may grant permission to an Owner to plant, cultivate and maintain flower and vegetable gardens, fruit trees, shrubs, ornamental trees or other plants. Upon approval by the Association, the Design Review Committee, upon written request describing the proposed garden or plantings and its location, in reasonable specificity shall review such plans approving or modifying as appropriate. Any such garden or planting shall not be visible from the street, shall not interfere with the mowing or maintenance of lawns or common areas and shall be kept clear of debris, weeds or unsightly growth.

ARTICLE IX Rights of First Mortgagees

9.1 General Provisions. Notwithstanding and prevailing over any other provisions of this Declaration, the Design Standards or Community Association Articles, Community Association Bylaws or Rules, the provisions of this Article shall apply to and benefit each holder of a First Mortgage upon a Lot.

9.2 Liability for Assessments. A First Mortgagee who comes into possession or becomes record Owner of a mortgaged Lot by virtue of foreclosure of its Mortgage, or through any equivalent proceedings, such as, but not limited to the taking of a deed or assignment in lieu of foreclosure on any third party purchaser at a foreclosure sale or trustee's sale, will not be liable for such Lot's unpaid dues, charges or Assessments under this Declaration which may accrue prior to the time such First Mortgagee or third party purchaser comes into possession of such Lot, or becomes record Owner of the Lot, whichever occurs first, and shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any such dues, charges or Assessments accrued prior to the earlier of the time such First Mortgagee or third party purchaser came into possession of such Lot or became record Owner of the Lot. Any such unpaid dues, charges or Assessments against the Lot foreclosed shall be deemed to be a Common Expense. Nevertheless, in the event the Owner against whom the original Assessment was made is the purchaser of or redeems the Lot, the lien shall continue in effect and may be enforced for the respective Lot's Assessment that was due prior to the final conclusion of any such foreclosure or equivalent proceedings. Further, any such unpaid Assessment shall continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Community Association, and the Community Association Board may use reasonable efforts to collect the same from said Owner even after the Owner is no longer a member of the Community Association or the Owner of the Lot.

9.3 Enforcement after Foreclosure Sale. An action to abate the breach of any of these covenants, conditions, restrictions, and reservations may be brought against the purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

9.4 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption), or from the time a trustee under a first deed of trust has been given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action

may but need not exercise any or all of the rights and privileges of the Owner in default including, but not limited to the right to vote as a Member of the Community Association in the place and stead of the defaulting Owner.

9.5 Subject to Declaration. At such time as the First Mortgagee shall come into possession of or become record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this declaration, including, but not limited to, the obligation to pay all Assessments and charges accruing thereafter, in the same manner as any other Owner.

ARTICLE X Annexation of Additional Property

10.1 Development of the Project. Additional real property may be annexed to and become subject to this Declaration as hereinafter set forth in this Article at such time as the Developer or Community Association may elect.

10.2 Supplemental Declarations. A Supplemental Declaration shall be a writing in recordable form which annexes Annexation Property to this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements, and other provisions of this Declaration and shall contain such other provisions as are necessary to designate such property. Supplemental Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the Annexation Property and as are not inconsistent with this Declaration. In no event, however, shall any such Supplemental Declaration revoke, modify or add to the covenants established by this Declaration with respect to the portion of the Community already subject to this Declaration, except that it may reduce an Owner's Proportionate Share.

10.3 Annexation without Approval of Community Association. If added at the election of the Developer, the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Community Association without the approval, assent or vote of the Community Association provided that a Supplemental Declaration covering the Annexation Property shall be recorded by the Developer. The recordation of said Supplemental Declaration shall constitute and effectuate the annexation of the Annexation Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdictions of the Community for all intents and purposes of this Declaration and all of the Owners of Lots in the Annexation Property shall automatically be Owners in accordance with the terms hereof.

ARTICLE XI Exemption of the 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 the Developer, its employees, agents and subcontractors, or parties designed by it in connection with the construction, completion, sale or leasing of the Lots, or development of a

residence on any individual Lot, construction, development, or improvement of Common Areas and/or Common Properties on any part of the Community. The Developer may provide funding to the Community Association at such levels as the Developer, in the Developer's sole discretion, may believe necessary and proper. No funding stream from the Developer in any given year shall be deemed to imply a similar funding stream in any subsequent year. The Developer is specifically exempt from the payment of any Assessment, Regular or Special, as to any Lot owned by the Developer within the subdivision until that Lot has been transferred from the Developer to the first Owner other than the Developer.

ARTICLE XII Remedies

12.1 General Remedies. In the event of the default by any Owner, Occupant or other Person under the provisions of this Declaration, the Community Association, or the successors, assigns, or agents thereof or the Developer, shall have each and all of the rights and remedies which may be provided for in this Declaration, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, Occupant, or other Persons for an injunction, whether affirmative or negative, or for enforcement or foreclosure of any lien herein provided and the appointment of a receiver for the Lot, or for damages, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of remedies, or for any other relief, all without notice and without regard to the value of the Lot or the solvency of such Owner.

12.2 Expenses of Enforcement. All expenses of the Community Association or the Developer or other Person granted rights of enforcement hereunder, in connection with any action or proceeding described or permitted by this Article, including court costs and reasonable attorney's fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner, or other Person and shall be a Special Assessment against such Owner or other Person, and the Community Association or Developer shall have a lien as provided in this Declaration. In the event of any default by any Owner or other Person, the Community Association and the Developer, and any permitted manager or managing agent, if so authorized, shall have the authority to correct such default and to do whatever may be necessary for such purpose, and all expenses in connection therewith, together with interest thereon until paid at the Default Rate of Interest, shall be charged to and assessed against such defaulting Owner or other Person as a Special Assessment, which shall constitute a lien against the defaulting Owner's Lot as provided herein. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Community Association or the Developer.

12.3 Legal Action. In addition to any other remedies available under this Article, but subject to the alternative dispute resolution provisions provided in Article III, Section 3.18, if any Owner (either by Owner's conduct or by the conduct of any Occupant of such Owner's Lot or family member, guest, invitee, or agent of such Owner) shall violate any of the provisions of this Declaration or any other document contemplated hereby, as then in effect, then the Community 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 Community Association unrelated to enforcement of the Declaration, the Community Association Articles, Community Association Bylaws or Community Association Rules, the Community Association shall promptly provide notice to the Community Association Members of such proceedings.

12.4 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any other document contemplated hereby, shall not defeat or adversely affect the lien of any covenants, Mortgagee upon any Lot but, except as herein or therein specifically provided, each and all of said covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise.

12.5 Limitation of Remedies. Notwithstanding the provisions of this Article XII, the Community Association, by and through the Community Association Board or otherwise, shall not have the power to: (1) deny any Owner access to his or her Lot; (2) suspend any Owner's right to vote for Community 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 Amendment

13.1 Amendments to Declaration. Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets for the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by a Majority of the Community Association Board Members prior to its adoption by the Community Association Members. Amendments may be adopted at a meeting of the Community Association Members upon the approval thereof of two-thirds (2/3) of all the Community Association Members entitled to vote thereat, or without any meeting if all Community Association Members have been duly notified and if two-thirds (2/3) of all the Community Association Members entitled to vote at such a meeting, if held, consent in writing to such amendment. In all events, the amendment when adopted shall bear the signature of the President of the Community Association and shall be attested by the secretary, who shall state whether the amendment was properly adopted, and shall be acknowledged by them as officers of the Community Association. Amendments once properly adopted, shall be effective upon recording of the Amendment to Declaration in the office of the appropriate Community Association or the Developer and Recorded.

13.2 Effect of Amendment. It is specifically covenanted and agreed that any amendment to this Declaration property adopted will be completely effective to amend any and all of the easements, covenants, conditions and restrictions contained herein which may be

affected and any or all clauses of this Declaration, unless otherwise specifically provided in the Section be amended or the amendment itself.

13.3 Required Approvals. Notwithstanding the provisions of the foregoing Sections of this Article:

(a) If this Declaration or any applicable provision of law requires the consent or agreement of additional parties, or a specified percentage thereof, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such action shall be signed by all parties, as required by this Declaration or by said law.

(b) Until the latter of when (i) ninety-five percent (95%) of all the Lots in the Community (as it exists from time to time) have been sold to third parties, and (ii) Developer owns less than two acres of the following land, Lots 1, 2, 6A, 6B, 7A and 7B, the townhomes at Brianna Court Townhomes, a residential planned unit development, in the City of Manhattan, Riley County, Kansas, as it exists from time to time, this Developer reserves the right to amend this Declaration or Residential District Rules without the approval of the Community Association, Community Association Board, or any Owner or other Person; provided, however, that no such amendment shall have the effect of changing the Plat of an Owner's Lot without the consent of the Owner.

ARTICLE XIV General Provisions

14.1 Notice. Notices provided for in this Declaration, the Community Association Bylaws, or the Community Association Rules, shall be in writing and shall be addressed to the Community Association at the address specified in the Community Association Bylaws. The Community Association may designate a different address or addresses for notice by giving written notice of such change of address to all Community Association Members at such time. All notices to Community Association Members shall be to the last mailing address and/or electronic mail address (to the extent that a Community Association Member has an electronic mail address) of a Community Association Member designated by such Community Association Member and shown on the records of the Community Association. In the absence of such a designation by a Community Association 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 Community Association Member. Any Community Association Member may designate a different address or addresses for notice to it by giving written notice of its change of address to the Community Association. Notices addressed as set forth above shall be deemed delivered when mailed by United State 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 Community Association and the Community Association Members, or between Community Association Members, the Community Association shall provide the designated mailing address and/or electronic mail address of all Community Association Members to any Community Association Member who shall request such information.

14.2 Captions and Exhibits; Construction. Captions given to various Sections herein, and the Table of Contents for this Declaration, are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. The various exhibits referred to herein are incorporated as though fully set forth where such reference is made. The provisions of this Declaration shall be construed to effectuate its purpose of creating a uniform plan for the development and operation of the Community as hereinabove set forth.

14.3 Severability. If any provision of this Declaration, the Community Association Articles or Community Association Bylaws, or Community Association Rules, or any Section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Community Association Articles or Community Association Bylaws, or Community Association Rules, and of the application of any such provision, Section, sentence, clause, phrase or work in any other circumstances shall not be affected thereby, and the remainder of this Declaration, the Community Association Articles or Community Association Bylaws, or Community Association Rules shall be construed as if such invalid part were never included therein.

14.4 Term. This Declaration shall continue in full force and effect (subject, however, to the right to amend as herein provided) until January 1, 2090. Thereafter, unless one (1) year prior to January 2, 2090, there shall be Recorded an instrument directing the termination of this Declaration signed by at least two-thirds (2/3) of all Community Association Members then entitled to vote, this Declaration shall automatically continue without any further notice for an additional period of ten (10) years and thereafter for successive periods of ten (10) years each; provided however, that within one (1) year prior to the expiration of any such ten (10) year period, this Declaration may be terminated as set forth in this section.

14.5 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 provision shall continue until twenty-one (21) years after the death of the survivor of any currently living person in Riley County, Kansas.

14.6 Mortgage of Lots. Each Owner shall have the right, subject to the provisions hereof, to separately Mortgage that Owner's Lot. No Owner shall have the right or authority to make, or create, or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Community of any part thereof, except only to the extent of that Owner's Lot.

14.7 Power of Attorney. Whenever the Community Association is granted rights, privileges, or duties in this Declaration, the President shall have the authority to act for the Community Association, unless such right and power is hereby expressly reserved to the Community Association Board. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Community Association is empowered to take any action or do any act, which may at any time be deemed to require the act of an Owner or Community Association Member, the Owners and Community Association Members, and each of them, hereby constitute and appoint the Community Association as their attorney in fact, as may be appropriate, for the purposes of taking such action or doing such acts including, but not

limited to executing, acknowledging, and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by becoming a Member of a Community Association, or by the acceptance of a deed for a Lot, or by signing a contract for purchase of a Lot, or by succeeding in any other manner to the ownership of a Lot, or any interest therein, each Owner and Community Association Member shall be deemed and construed to have ratified and expressly granted the above power of attorney.

ARTICLE XV
Rights and Obligations

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

All other terms and conditions of the Declaration are hereby ratified and confirmed, and incorporated herein by reference, except as amended herein. The below-signed individual, on behalf of the Community Association, hereby re-submits such Lots covered under said Declaration as restated and amended herein and to the Townhouse Ownership Act.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

Signature Page

First Restatement and Amendment of the Declaration of Easements, Covenants, Conditions and Restrictions for the Brianna Court Townhomes

IN WITNESS WHEREOF, the below-signed individual, on behalf of Brianna Townhomes Community Association, Inc., has caused this First Restatement and Amendment of the Declaration of Easements, Covenants, Conditions and Restrictions for the Brianna Court Townhomes to be duly executed on the date set forth above.

**BRIANNA COURT TOWNHOMES
COMMUNITY ASSOCIATION, INC.,** a
Kansas corporation organized not for profit

By: _____
Ronald J. Forkenbrock, President

STATE OF KANSAS, COUNTY OF RILEY, ss:

BE IT REMEMBERED, that on this ___ day of April, 2013, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Ronald J. Forkenbrock, as President of the Brianna Court Townhomes Community Association, a Kansas corporation organized not for profit, who is known to me to be the same person who executed the foregoing instrument and duly acknowledged the execution of the same.

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

Notary Public

My appointment expires:

SECRETARY’S ATTESTATION

I, Mary Stiver, Secretary of Brianna Court Townhomes Community Association, hereby attest and do solemnly swear that the foregoing amendment to the Declaration was properly adopted on this ___ day of April, 2013. The foregoing amendments shall become effective upon recording of such amendments in the office of the Register of Deeds for Riley County, Kansas.

ATTEST: _____
Mary Stiver, Secretary

Exhibit "A"

Lot 6A, 6B, 7A, and 7B, The Townhomes at Miller Ranch, Unit Two, a Residential Planned Unit Development, in the City of Manhattan, Riley County, Kansas.

Lots 1, 2, 5A, 5B, 8A, and 8B, The Townhomes at Miller Ranch Unit Three, a Residential Planned Unit Development, in the City of Manhattan, Riley County, Kansas.