

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR WESTBANK TOWNHOMES
A RESIDENTIAL PLANNED UNIT DEVELOPMENT**

THIS DECLARATION, made on this 28th day of June, 1999 by Westbank Development Corp. hereinafter referred to as "Declarant," and Karyl A. Croft, a single person, and Little Kitten Creek, Inc., hereinafter referred to as "Owners" pursuant to the provisions of the Kansas Townhouse Ownership Act for the purpose of submitting the real estate which is hereinafter described and the improvements located or to be located thereon to the provisions of the Kansas Townhouse Ownership Act.



**ARTICLE 1
TOWNHOUSE ACT**

BOOK **761** PAGE **953**

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STATE OF KANSAS RILEY COUNTY
RECORDED BOOK 761 PAGE 953
X CHARLOTTE SHAWVER, REGISTER OF DEEDS

Declarant and Owners are the record owners of the following-described real estate located in the City of Manhattan, Kansas:

Lots 1A, 1B, 2A, 2B and 10 of the Westbank Townhomes Addition,
Unit 2, to the City of Manhattan, Riley County, Kansas;

which Declarant and Owners submit to this Declaration and to the provisions of the Kansas Townhouse Ownership Act.

**ARTICLE 2
DEFINITIONS**

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

2.1. Townhouse Unit means unit defined by the Townhouse Ownership Act and as described in article 3 of this Declaration.

2.2. Townhouse Unit Owner means the person or persons owning the real estate in fee simple on which a townhouse unit is located as defined by the Townhouse Ownership Act, and shall include the contract purchaser of a townhouse unit who has complied with the provisions of Section 10.11 of this Declaration.

2.3. Association of Townhouse Owners, referred to also as Association, means Westbank Townhomes Association, Inc., a Kansas not-for-profit corporation and its successors.

2.4. Common Areas and Facilities means and includes all areas of land on the Plat marked as Lot 10 and "Common Area," and hereinafter defined, together with the following:

(a) All recreational facilities, structures, trees, landscaping, or other improvements located upon real estate owned by the Association;

(b) All private streets, drives, and parking areas located upon real estate owned by the Association;

(c) All installation of central services, if any, for the benefit of more than one townhouse unit owner, such as trash receptacles, pipes, wires, conduits, and other public utility lines and facilities;

(d) All easements, rights, and appurtenances thereto necessary for the existence, maintenance, and safety of the townhouse units;

(e) All personal property owned by the Association intended for use by the Association in the exercise of its powers as set forth in this Declaration.

2.5. Common Expenses mean and include:

(a) Expenses of administration; insurance expenses; outside lighting expenses and maintenance; and expenses incurred in the maintenance, operation, repair and replacement of the common areas and facilities and the portions of the townhouse units to be maintained by the Association;

(b) Expenses declared common expenses by the Association and assessed against the townhouse unit owners; and

(c) Expenses declared common expenses by provisions of the Townhouse Ownership Act or by the declaration or the bylaws of the Association.

2.6. Declaration means this instrument submitting the Properties to the Townhouse Ownership Act.

2.7. Person(s) means a natural individual(s), corporation, partnership, trustee, or other legal entity capable of holding title to real property.

2.8. Plat(s) means the plat(s) of survey of the above-described real estate that have been filed in the Office of the Register of Deeds of Riley County, Kansas, and are incorporated

herein by reference.

2.9. Properties means all the land, property or properties and space, all improvements and structures erected, constructed, or contained therein or thereon, including the buildings and all easements, therein or thereon, and all rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit, or enjoyment of the townhouse unit owners, and which have been submitted to the provisions of the Townhouse Ownership Act by this Declaration or by amendments thereto in accordance with article 9 of this Declaration.

2.10. Lot means and refers to the individual plots of land (except lot 10) on the above described real estate which are owned by each Townhouse Unit Owner. No portion of the common area or lot 10 shall be included within the term "Lot" as referred to herein.

2.11. Building means a structure within the properties composed of one or more townhouse units.

2.12. Declarant means Westbank Development Corp., its successors and assigns.

ARTICLE 3 DESCRIPTION OF TOWNHOUSE UNITS

A townhouse unit may be a part of a building which contains townhouse units joined together by a common or party wall, and having a common roof and foundation, or may be a building containing only one residential unit. Each townhouse unit is a part of the Lot on which it is situated.

ARTICLE 4 PROPERTY RIGHTS

4.1. Ownership of Townhouse Units. Upon recording this Declaration and the Plat the properties shall become subject to the provisions of this Declaration and of the Townhouse Ownership Act, and all townhouse units shall thereupon be capable of ownership in fee simple or any lesser estate, and may thereafter be conveyed, leased, mortgaged, or otherwise dealt with in the same manner as other real property, but subject, however, to the provisions, conditions, and limitations imposed by the Townhouse Ownership Act, this Declaration, the Bylaws, and Rules and Regulations of the Association.

4.2. Townhouse Unit Owners' Easements of Enjoyment. Every townhouse unit owner shall have a right and easement of enjoyment in and to the common area, which shall be appurtenant to, shall pass with the title to every townhouse unit, and shall be subject, however, to the following limitations:

(a) the right of the Association to charge reasonable maintenance assessments and assessments for capital improvements as hereinafter set forth.

(b) the right of the Association to adopt rules and regulations governing the use and enjoyment of the common area, and to suspend the voting rights of, and rights to the use of any recreational facilities located in and upon the common area by a townhouse unit owner for a period not to exceed sixty (60) days for any infraction of such adopted and published rules and regulations.

(c) the right of the Association to dedicate or transfer all or any part of the common area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by eighty percent (80%) of each class of members agreeing to such dedication or transfer has been recorded.

(d) the right of the Declarant and of the Association, in accordance with its articles and bylaws, to borrow money for the purpose of improving the common area and in aid thereof to mortgage all or any part thereof. Any such mortgage shall provide that in the event of a default, the lender shall have no rights that shall in any way impede, limit, or restrict the right and easement of a townhouse unit owner to the use of the common area for the unrestricted ingress and egress to and from his townhouse unit.

(e) the right of the Association to take such steps as are reasonably necessary to protect the common areas and facilities against foreclosure.

4.3. No Limitation on Access to Townhouse Units. Notwithstanding anything in this Article 4 to the contrary, the Association may not revoke, limit, restrict, or suspend in any way the right of any owner to use and enjoy any private street located upon the properties or to any driveway over which an owner shall have an exclusive easement, and there shall be no limitation on the vehicular or pedestrian access of a townhouse unit owner to and from his townhouse unit to a public street or to a private street leading to, joining, or intersecting a public street.

4.4. Delegation of Use. Any townhouse unit owner may delegate his right of enjoyment of the common area and facilities to the members of his family, his tenants, or contract purchasers who reside in his townhouse unit.

4.5. Title to Common Area. Declarant may retain the legal title to the common area until such time as it has completed improvements thereon and until such time as, in the opinion of Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, Declarant covenants that the common area shall be transferred and conveyed to the Association, free and clear of all liens and encumbrances, other than specifically provided in this Declaration, not later than December 31, 2010.

4.6. Easements. In addition to easements hereinbefore or hereinafter specifically created or reserved, the following easements are hereby created or reserved:

(a) An easement is hereby created in favor of each townhouse unit owner, members of his family, his tenants, guests, invitees, and licensees, in and to that portion of the common area which is improved and constructed as a private drive, for the purpose of pedestrian and vehicular ingress and egress to and from the townhouse units, which easement shall be perpetual and non-exclusive for the common benefit and use of the townhouse unit owners, members of their families, their guests, tenants, invitees, and licensees.

(b) An exclusive easement is hereby created in favor of each townhouse unit owner in and to that portion of the common area consisting of a driveway and sidewalk appurtenant to each townhouse unit, and such easement shall be perpetual for the benefit and use of the townhouse unit to which such common area is appurtenant, and to members of his family, guests, tenants, invitees, and licensees.

(c) An easement is hereby created in favor of the Association, permitting it to enter into or upon any lot, building, or townhouse unit for the purpose of performing its powers and duties as delineated herein, and in the articles of incorporation and bylaws. The right established in this paragraph shall be exercised in a reasonable manner. Public utilities furnishing services for common use, such as water, electricity, gas, sewerage, telephone, and cable television to the properties shall have access to the common areas and facilities, the lots, the buildings, and the townhouse units as may be necessary for the installation, repair, or maintenance of such services.

(d) For the purpose of supplying utilities and various services to the townhouse units and common area, the Declarant shall have and does hereby reserve easements to locate, construct, maintain, and use, or authorize the location, construction, maintenance, and use of such portions of the properties as Declarant may designate for drains, sanitary and storm sewers, gas and water mains and lines, electrical and telephone lines, cable television conduits and lines, community television antenna lines, fire warning and security systems and other utility lines and conduits for any and all purposes.

(e) A party wall easement is hereby established over that part of any townhouse unit in which any part of a common wall between townhouse units is constructed, together with the right to restore any such party wall, and such party wall may contain plumbing lines, vent stacks for plumbing and heating, electricity pipes and conduits and fireplace flues, serving improvements using such party wall. The party wall easement shall be a cross-easement in favor of each townhouse unit in which is located a common or party wall.

(f) There is reserved for the benefit of each townhouse unit, as dominant tenement, such portion of the properties and each other townhouse unit jointly as the servient tenement, as shall be encroached upon, used, and occupied by the owner of the dominant tenement as a result of any construction errors, errors in survey, errors in platting, movement or subsidence

of a townhouse unit or building or any portion thereof.

(g) An easement for utility services is hereby reserved for the benefit of each townhouse unit, which is a part of a building which contains two or more townhouse units joined together by a common or party wall, as dominant tenement, over, under, and through the properties and each other townhouse unit in such building as the servient tenement.

(h) Until December 31, 2010, or until Class B membership terminates, whichever occurs earlier, Declarant reserves an easement and right on, over, and under the properties, for the purpose of maintaining and correcting drainage of surface water in order to avoid erosion and to ensure reasonable standards of health, safety, and appearance. Such easement expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary for such purposes, following which Declarant shall restore the affected property to its original condition to the extent reasonably practicable. Declarant shall give reasonable notice of its intent to take any such action provided under of this subparagraph to all affected townhouse unit owners, unless in the sole discretion of Declarant an emergency exists which must be remedied before such notice could reasonably be given.

(i) The following additional easements are also created and established over, under, and across all townhouse units:

(i) For the purpose of draining snow and rain water from the roof of any part of a building containing more than one townhouse unit through gutters, downspouts, and drains located on any other part of such building.

(ii) For the purpose of supporting a roof of any townhouse unit which is a common roof of such townhouse unit and another townhouse unit.

(j) All easements and rights herein established shall run with the land, and unless in gross, inure to the benefit of and be binding upon the owners of all townhouse units in the properties and additions thereto, and their successors, heirs, and assigns, whether such easements are mentioned or described in any deed of conveyance.

4.7. License for Gardens and Ornamental Plantings. The Association, in its sole and absolute discretion, may grant to a townhouse unit owner a license, for such a time or times and upon such conditions as the Association may determine, pursuant to which the townhouse unit owner to whom such license is granted may use a portion of the common area for the purpose of planting, cultivating, and maintaining flower gardens, vegetable gardens, fruit trees, shrubs, ornamental trees, plants, or similar items. Prior to planting or otherwise establishing such garden or plantings, a townhouse unit owner shall make a written request to the Association which shall describe the proposed garden or plantings and their location in reasonable detail.

The Association shall approve or deny, or approve subject to restrictions or limitations, the

townhouse unit owner's request, and if a written approval or denial, or approval with conditions or limitations, shall not have been provided to the requesting townhouse unit owner within forty-five (45) days from the date of the townhouse unit owner's written request, the townhouse unit owner shall be permitted to plant or establish such gardens or plantings as described in the request.

**ARTICLE 5
MEMBERSHIP AND VOTING RIGHTS**

5.1. Townhouse Unit Owners. Every owner of a townhouse unit which is subject to assessment or subject to payment of maintenance expenses pursuant to article 8 of this Declaration, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any townhouse unit which is subject to assessment or to payment of maintenance expenses pursuant to article 8 of this Declaration. Members may vote at any meeting of the Association in person or by written proxy duly filed with the Secretary of the Association.

5.2. Classes of Membership. The Association shall have two classes of voting members:

(a) Class A. Class A members shall be all owners other than Declarant. Class A members shall be entitled to one vote for each townhouse unit owned. When more than one person holds an interest in any townhouse unit, all such persons shall be members. The vote for such townhouse unit shall be exercised as such persons shall among themselves determine, but in no event shall more than one vote be cast with respect to any townhouse unit.

(b) Class B. Class B member(s) shall be the Declarant, which shall be entitled to twenty (20) votes for each townhouse unit owned by the Declarant and to be included in the final development plan (whether said units are under construction or construction is complete but the units are not sold). The Class B membership shall terminate on the happening of either of the following events, whichever occurs earlier:

- (1) when the total votes outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership, or
- (2) December 31, 2010.

**ARTICLE 6
POWERS AND DUTIES OF THE ASSOCIATION**

6.1. Duties. The Association shall have the following duties:

- (a) To maintain, repair, and replace the exterior of all buildings and

appurtenances thereto, including but not limited to all structural parts, party walls, roofs, guttering, eaves, and any other items not in the interior of a townhouse unit; provided, however, that routine sweeping and leaf removal from driveways, sidewalks, decks, and patios shall be the responsibility of the owner of the townhouse unit to which such appurtenances are a part. The exterior of a building shall not, however, include any windows, window glass, screens, storm windows, exterior doors or garage doors.

(b) To improve, maintain, and repair the common area and facilities and to replace items therein when necessary, all of which includes but is not limited to, grass areas, flower gardens, shrubs, trees, plants, streets, curbs, walkways, retaining walls, drainage and lighting facilities, and to remove snow and ice from the common area.

(c) To maintain the lawns and landscaping on the properties, including the regular mowing, irrigating, fertilizing, maintenance, and trimming of lawns, and the removal of all debris and unsightly objects from such lawns. The Association shall not, however, be obligated to maintain flower gardens, vegetable gardens, fruit trees, or shrubs, trees, plants, or similar items planted or established by a townhouse unit owner pursuant to a license from the Association and which, in the sole judgment of the Association, shall be determined to require the expenditure of Association funds for the benefit of only one townhouse unit owner rather than the common benefit of all townhouse unit owners.

(d) To remove snow and ice from any driveway, street, or sidewalk located upon the properties. The term sidewalk shall not include any frontwalk or extension from a front porch for the townhouse units.

(e) To pay all real estate taxes, including special assessments, levied against the common area.

(f) To obtain and provide public liability, casualty, and other such insurance deemed necessary by the Association for the common area and townhouse units, as more specifically set forth herein in article 10 hereof.

(g) To employ a responsible contractor to restore, reconstruct, replace, or repair any townhouse unit or building which has been completely or partially damaged or destroyed by fire or any other hazard or occurrence, and to pay for any such work from the insurance proceeds and to collect any excess of the cost of any such work over the said insurance proceeds as set forth in article 10 hereof.

(h) To make and enforce rules and regulations establishing the times and conditions for the parking of vehicles on the private street(s) or access road(s) within the properties.

(i) To do and perform such other things as may from time to time be necessary to maintain the quality and appearance of the common area and the buildings.

6.2. **Powers.** The Association shall have the following powers:

- (a) To fix, levy, and collect special assessments and assessments as common expenses or otherwise, against each townhouse unit as hereinafter set forth in article 8, for the purpose of performing its duty to maintain, repair, and replace the exterior of all buildings pursuant to Section 6.1(a) hereof.
- (b) To fix, levy, and collect assessments as common expenses or otherwise, against each townhouse unit, as hereinafter set forth in article 8, for the purpose of performing its duty to maintain and repair the common area and other parts of the properties, and to replace items therein when necessary pursuant to Sections 6.1(b), (c), and (d) hereof.
- (c) To collect and pay as common expenses real estate taxes, including special assessments, levied against the common area.
- (d) To fix, levy, and collect special assessments and assessments as common expenses against each townhouse unit, as hereinafter set forth in article 8, for the purpose of obtaining and paying the premiums for such public liability, casualty, and other insurance for the common area and townhouse units required by article 10 hereof.
- (e) To restore, reconstruct, replace, or repair any townhouse unit which has been damaged, as set forth in article 10, to collect and receive the proceeds from any insurance company covering loss or damage by fire or other hazard or occurrence to any townhouse unit, and to pay out of such proceeds the cost of any such restoration, reconstruction, replacement, or repair hereinabove mentioned, and to collect any excess of the cost of any such work over such insurance proceeds from the owner or owners of the respective townhouse unit incurring such excesses, all as hereinafter provided in article 10.
- (f) To adopt and publish such rules and regulations that it from time to time considers to be necessary for the enjoyment by the townhouse unit owners of the common area and for the preservation of the quality and appearance of the properties, and to amend such rules and regulations.

ARTICLE 7
MAINTENANCE OBLIGATIONS OF TOWNHOUSE UNIT OWNERS

7.1. Maintenance of Interiors of Townhouse Units. Each townhouse unit owner shall maintain in good condition and repair the interior of his townhouse unit, together with such other portions of his townhouse unit for which the Association shall not have the duty to maintain, repair, and replace. Any flues, ducts, conduits, wires, pipes, sewer lines, or other apparatus or any portion or part thereof lying partially within and partially outside of the interior of a townhouse unit

and which serve only that townhouse unit shall be deemed to be within the interior of the townhouse unit and shall be maintained by the owner thereof. Any flues, ducts, conduits, wires, pipes, sewer lines, or other apparatus or any portion or part thereof lying partially within and partially outside of the interior of a townhouse unit which serve two or more townhouse units, both of which are located in the same building shall be maintained by the owners of the units of such building, in the same manner and subject to the same rules and obligations, as pertain to party walls in accordance with article 13 of this Declaration. Any flues, ducts, conduits, wires, pipes, sewer lines, or other apparatus or any portion or part thereof lying partially within and partially outside of the interior of a townhouse unit and which serve more than one townhouse unit and such townhouse units are located within two or more buildings, shall be deemed to be outside of the interior of the townhouse units, and shall be maintained by the Association as a part of the common area and facilities.

7.2. Routine Maintenance. Each townhouse unit owner shall be responsible for routine sweeping and leaf removal from driveways, sidewalks, decks, and patios which are appurtenant to his townhouse unit. Each townhouse unit owner shall also be responsible for snow and ice removal from the front porch and frontwalk of his townhouse unit.

* 7.3. Exterior Painting. No townhouse unit owner shall paint or otherwise decorate or change the appearance of any portion of the exterior of his townhouse unit or do any work which would jeopardize the soundness, attractiveness, or safety of the properties, reduce the value thereof, or impair any easement or hereditament without in every such case first obtaining the written consent of the Association.

7.4. Cooperation with Association. A townhouse unit owner shall promptly report to the Association any defect or need for repairs for which the Association is responsible. Each townhouse unit owner shall have the further duty to cooperate with the Association in order that his lot will be well-maintained and to exercise reasonable efforts to prevent the common areas from accumulating debris, litter, or other unsightly objects.

7.5. Option to Provide Exterior Maintenance. Subject to the written consent of the Association, a townhouse unit owner may provide and pay for the maintenance, repair, and replacement of the exterior of his townhouse unit, and to the extent of such maintenance, repair, and replacement, special assessments shall not be levied against such townhouse unit owner so long as such maintenance, repair, and replacement shall be performed in a workmanlike manner that is compatible with the quality of workmanship in the other townhouse units and the original workmanship in such owner's townhouse unit. The Association, in its sole and absolute discretion, may require reasonable assurance from a townhouse unit owner that the maintenance, repair, and replacement to be provided and paid by such owner shall be performed in the manner required in this Section 7.5, and may further require proof of payment for labor or materials furnished or provided for such maintenance, repair, or replacement. Any townhouse unit owner providing and paying for such maintenance, repair, or replacement shall indemnify and hold the Association harmless from all claims, liability, damage, or expense, including reasonable attorney's fees, resulting from or out of the maintenance, repair, or replacement provided or performed by the townhouse unit owner, and

agrees that if such maintenance, repair, or replacement shall not be performed as required by this section 7.5, the Association may, in its discretion, do whatever shall be reasonably necessary to correct such maintenance, repair, or replacement and the cost thereof shall be charged as a special assessment to the townhouse unit owner.

**ARTICLE 8
COVENANTS FOR ASSESSMENTS**

8.1. Assessments for Common Expenses. The Declarant, for each townhouse unit within the property hereby covenants and agrees, and each owner of any townhouse unit by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association assessments or charges to be fixed, established, levied, and collected from time to time as hereinafter provided, which assessments shall include, but not be limited to real estate taxes levied against the common area, liability and casualty insurance, and expenses necessary for the maintenance, repair, and replacement of the common area and facilities.

8.2. Special Assessments. The cost of maintaining, repairing, and replacing the exterior portions of townhouse units, except costs covered by insurance, shall be assessed as special assessments following the completion of such maintenance, repair, or replacement. Such costs shall be assessed against the owners of the townhouse unit in the particular buildings in the proportion that the square footage on the main level including garage and porch, but excluding basement bears to the total such square footage in the building upon which such work was performed, and the full amount of such assessment shall be paid within ten (10) days following billing by the Association.

8.3. Determination and Payment of Assessments. The Board of Directors of the Association shall adopt a budget for each calendar year on or before the second Monday in December of the year preceding the year for which the budget is made, which budget shall contain estimates of the costs of performing the obligations of the Association, taking into consideration overages and/or shortages from previous years, making provisions therefor, and including but not limited to, assessments for common expenses, alterations and improvements, reconstruction and repairs, reserves, including reserves for capital improvements, and emergencies. Concurrently therewith, the Board of Directors shall prepare the proposed assessment against each townhouse unit owner, on the basis that the estimated costs, other than those for which special assessments may be made, shall be borne equally by the townhouse unit owners. The assessment against each townhouse unit owner shall be due and payable monthly in such amounts as may be determined by the Board of Directors on the first day of each month during the year for which the assessment is made. A copy of each annual budget, together with the proposed assessment to be made against each townhouse unit owner, shall be delivered to each such owner on or before the first day of the calendar year for which the budget and assessments are prepared. If an annual budget or proposed assessment is not made as required, a payment in the amount required by the last prior assessment shall be due from each townhouse unit owner upon each assessment payment date until changed by a new assessment made by the Board of Directors. Within sixty (60) days following each calendar year the Board of

Directors shall send to each townhouse unit owner an annual report of assets and liabilities of the Association issued as of the last day of such calendar year. Copies of the budget, the assessments, and the annual report shall be furnished to any mortgagee or to any townhouse unit owner upon request.

8.4. Other Assessments. Other assessments shall be made by the Board of Directors in accordance with the provisions of the Declaration, the Bylaws, and as otherwise required by the lawful resolution of the Board of Directors.

8.5. Assessments for Emergencies. Assessments for common expenses resulting from emergencies which cannot be paid from an appropriate expense account may be made by the Board of Directors from time to time.

8.6. Assessments for Purchase or Lease. Assessments may be made from time to time by the Board of Directors to defray the cost involved in the acquisition or leasing by the Board of Directors on behalf of the townhouse unit owners of any townhouse unit purchased, acquired, or leased by the Board of Directors pursuant to the provisions of the Declaration, the Bylaws, or the Townhouse Ownership Act.

8.7. Assessment Roll. The assessments against all townhouse unit owners shall be set forth upon a roll of the townhouses which shall be available in the office of the Association for inspection at all reasonable times by townhouse unit owners or their duly authorized representatives. Such roll shall indicate for each townhouse unit the name and address of the owner or owners, the assessments, and the amounts of all assessments paid and unpaid.

8.8. Liability for Assessments. The owner of a townhouse unit and his grantee shall be jointly and severally liable for all unpaid assessments due and payable at the time of a conveyance of the unit. Such liability may not be avoided by a waiver of the use and enjoyment of the common area or by abandonment of the townhouse unit for which the assessments are made.

8.9. Date of commencement of assessments. The assessments provided for by this article 8 shall commence as to each townhouse unit on the day a deed shall be delivered by the Declarant to the owner of such townhouse unit. If a deed to a townhouse unit shall not be delivered on the first day of a month, the first monthly assessment shall be prorated on a daily basis so that an assessment shall be made only for that part of the month following the delivery of the townhouse unit owner's deed.

8.10. Default in Payment of Assessments.

(a) Any assessment or charge not paid within five (5) days following the date it is due shall be delinquent, and the delinquent townhouse unit owner shall be considered in default in his obligation to make such payment.

(b) In the event of default by a townhouse unit owner in paying to the Association any assessment, such townhouse unit owner shall be obligated to pay interest at a rate equal to the maximum rate then allowable in Kansas on notes and contracts secured by a first real estate mortgage, or fifteen percent (15%) per annum, whichever shall be the lesser, on such assessment from the due date thereof, together with all expenses, including attorneys' fees (if and to the extent allowed by law) incurred by the Board of Directors in attempting to collect such unpaid assessment. The Board of Directors shall have the right to recover such unpaid assessment, together with interest thereon, and such expenses of the proceeding in any action to recover the same brought against such townhouse unit owner, and/or by foreclosure of the lien as provided in Section 8.11.

(c) A townhouse unit owner in default in the payment of any assessment for a period of thirty (30) days shall not be entitled to vote at any meeting of the townhouse unit owners so long as such default continues, except with respect to matters requiring the unanimous consent of all townhouse unit owners.

(d) Except as set forth in Section 10.11 of this Declaration, no townhouse unit owner shall be liable for the payment of any part of an assessment against his townhouse unit which is assessed subsequent to a sale, transfer or other bona fide conveyances by him of such townhouse. A townhouse unit owner shall, however, be liable for any special assessment for insurance premiums paid, or for maintenance, repair, or replacement costs incurred with respect to his townhouse unit, prior to the sale, transfer, or conveyance of his townhouse unit, even though the special assessment for such premiums or costs shall not have been made on or before such transfer, sale, or conveyance. In addition, any townhouse unit owner owning the fee simple interest in his townhouse unit, may, subject to the consent of the Board of Directors, and provided that his townhouse unit is free and clear of liens and encumbrances other than a bona fide first mortgage and a lien for unpaid assessments, convey his townhouse unit to the Board of Directors, or its designee, on behalf of all other townhouse unit owners, and in such event be exempt from common expenses thereafter assessed.

8.11. Lien for Assessments.

(a) All sums assessed by the Association but unpaid for the share of common expenses chargeable to any townhouse unit shall constitute a lien on such townhouse unit and the lot on which it is situated, and shall be prior to all other liens except only (i) tax liens on the townhouse unit and lot in favor of any political subdivision, municipal corporation, special benefit district, or other state or federal taxes which are by law a lien on the interest on such townhouse unit owner prior to previously recorded encumbrances thereon, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the Board of Directors of the Association in like manner as a mortgage on real property. In any such foreclosure, the Association shall have power to bid in the townhouse unit and lot at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

(b) Where the mortgagee of a first mortgage of record or other purchaser of a townhouse unit obtains title to a townhouse unit as a result of a foreclosure of the first mortgage or by a deed executed in lieu of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses of assessments chargeable to such townhouse unit which become due prior to the acquisition of title to such townhouse unit by the acquirer and such acquirer of title shall take the property free of any claims for unpaid assessments or charges against the mortgaged townhouse unit which accrued prior to the time of acquisition of such title. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all townhouse unit owners including such acquirer, his successors, and assigns.

(c) In a voluntary conveyance the grantee of a townhouse unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for grantor's share of the common expenses up to the time of the grant of conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Provided, however, that any such grantee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be subject to a lien for any unpaid assessments against the grantor in excess of the amount therein set forth.

8.12. Improvement and assessment by governmental agency. Nothing in this Declaration shall be deemed to prevent a majority of owners from submitting a petition to the City of Manhattan, Kansas or any other appropriate government or governmental agency, for the improvement, repair, maintenance or replacement of any improvement located in the Common Area in accordance with applicable improvement and assessment laws of the State of Kansas, which right may be exercised by the Owners at any time and from time to time. Nothing in the Declaration shall be deemed to prevent the governing body of the City of Manhattan, Kansas, or any other appropriate government or governmental agency, from initiating or adopting a resolution for the improvement, repair, maintenance or replacement of any improvements located in the Common Area in accordance with the applicable improvement and assessment laws of the State of Kansas, at any time and from time to time.

8.13. Declarant's Payments During Sale and Development Period. Notwithstanding anything in this Declaration to the contrary, following the commencement of assessments and during the development and sale period (which shall mean the period up to the time that Class B membership is converted to Class A membership) Declarant, even though a member of the Association, shall not be responsible for the payment of the regular Association assessment except for any townhouse unit which it actually uses for purposes other than display for sale. However, Declarant shall be required to pay a proportionate share of the Association insurance costs and maintenance expenses actually incurred based upon the total number of townhouse units owned by Declarant at the time the expense is incurred. Declarant shall not be responsible for the payment of any assessments for deferred maintenance, reserves for replacements, or for capital improvements during the development and sale period except for any townhouse unit which it actually uses for purposes other than display for sale.



**ARTICLE 9
DECLARANT'S RESERVED RIGHT TO ADD LOTS**

9.1 Additional Lots. Declarant expressly reserves the option and the right to construct additional units upon the areas designated on the Plat as Lot 10 and Common Area, in accordance with the provisions of this Article 9.

9.2 Consent of Townhouse Unit Owners Not Required. The consent of the Townhouse Unit Owners shall not be required for the construction of such additional lots and Declarant may proceed with such construction at Declarant's sole option.

9.3 Expiration of Option to Construct Additional Lots. Declarant's option to construct additional townhouse units shall expire on December 31, 2010, if not sooner exercised; however, Declarant may, at any time prior to the expiration of such period, terminate Declarant's option to construct said additional townhouse units by recording an executed document terminating this option as to such land in the office of the Register of Deeds of Riley County, Kansas.

9.4 Amendment to Declaration. The additional townhouse units shall be added to the properties by Declarant filing in the office of the Register of Deeds of Riley County, Kansas, a plat of survey in accordance with K.S.A. 58-3707, setting forth such additional lots. The joinder of the Association or of the Townhouse Unit Owners shall not be required in such amended declaration or in such plat of survey.

9.5 Additional Lots Subject to Declaration. Upon filing of the amended declaration and the plat of survey as described in Section 9.4, in the office of the Register of Deeds of Riley County, Kansas, the additional lots shall become a part of the properties. Such lots and townhouse units shall be fully subject to the covenants, restrictions, easements, charges, and liens set forth in this declaration, and shall become subject to the jurisdiction of the Association, and thereupon each owner of said additional units shall become a member of the Association without further act on the part of such Townhouse Unit Owner or the Association.

**ARTICLE 10
INSURANCE AND CASUALTY LOSSES**

10.1. Required Insurance. Each townhouse unit owner shall maintain fire and extended coverage insurance against loss or damage by fire or other casualty to the full replacement value of the townhouse unit, excluding land, foundation and excavations. Such insurance shall provide for payment for losses thereunder by the insurer to the Association, or its nominee, as Insurance Trustee, for the benefit of each Owner, the holder of each first mortgage of record thereon, and the Association as their interests appear. The deductible for such fire and extended coverage insurance shall not exceed \$500 for each townhouse unit owner.

10.2 Proceeds of Insurance. The proceeds from insurance received by the Insurance Trustee shall be used to repair, reconstruct or rebuild the townhouse units damaged or destroyed by fire or other insured casualty, unless all townhouse unit owners and their first mortgagees agree in writing not to repair, reconstruct or rebuild.

10.3 Blanket Policy. The Board of Directors of the Association may direct and require the Association to obtain and maintain the insurance required by Section 1 of this article 10 under one blanket fire and extended coverage policy providing such insurance for all owners and first mortgagees of the townhouse units as their interests may appear. In the event such blanket policy is obtained, each townhouse unit owner shall be furnished a memorandum of insurance coverage setting forth the essential coverages of the blanket policy. The cost of such blanket policy shall be a common expense to be paid as set forth herein. The Board of Directors of the Association shall have the exclusive authority to negotiate losses insured against under a blanket policy.

10.4 Owners' Additional Insurance. The acquisition of a blanket policy shall not prejudice the right of each townhouse unit owner to insure his or her own townhouse unit under a separate policy of insurance provided the benefits thereunder are payable to the Association or its nominee as Insurance Trustee for the benefit of the Association and all townhouse unit owners and their first mortgagees, as their interest may appear. Townhouse unit owners are authorized to purchase additional insurance at their own expense to cover personal property within the unit and liability insurance to cover accidents within their unit.

10.5 Insurance for Common Areas. The Association is authorized to obtain liability insurance for the Common Areas and facilities, workmen's compensation insurance, if necessary and casualty insurance for all improvements owned by the Association. The cost of such insurance obtained pursuant to this Section 10.5 shall be a common expense.

10.6 Repair or Reconstruction After Fire or Other Casualty.

(a) If in the event of damage to or destruction of the properties or any part thereof as a result of fire or other casualty the proceeds of any policy or policies of insurance insuring against such loss or damage and payable by reason thereof, shall be substantially sufficient in the opinion of the Board of Directors to pay the cost of repair or restoration, estimated as hereinafter provided, then the Board of Directors shall arrange for the prompt repair and restoration of the buildings, (including any damaged townhouse units, but not including any equipment, fixtures, furnishings or personal property of the townhouse unit owners as described in the following paragraph), and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any actual cost of such repair and restoration to the common areas and facilities in excess of the insurance proceeds shall constitute a common expense and the Board of Directors may assess all the townhouse unit owners for such excess cost as part of the common expense.

(b) Each townhouse unit owner shall be responsible for the reconstruction,



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

(c) In the event the property or the improvements thereon so damaged or destroyed are not insured against the peril causing the loss or damage, or the insurance proceeds shall not be substantially sufficient in the opinion of the Board of Directors to pay the cost of repair or restoration, estimated as hereinafter provided, the president or secretary of the Association shall within sixty (60) days following such damage or destruction, call a special meeting of all townhouse unit owners. If at such meeting the owners, including contract sellers and first mortgagees, of all townhouse units shall vote, by written ballot, not to rebuild, reconstruct, or repair the damaged or destroyed portions of the properties, such portions of the property shall not be rebuilt, and the Board of Directors, as insurance trustee, shall pay the insurance proceeds to the owners of townhouse units, including contract sellers and first mortgagees, whose townhouse units would otherwise have been rebuilt, reconstructed, or repaired, as their interest in such insurance proceeds may appear.

(d) Notwithstanding anything in this article 10 to the contrary, if all townhouse unit owners, including contract sellers and first mortgagees, agree in writing not to repair, reconstruct, or rebuild any damaged or destroyed portions of the properties prior to the commencement of any rebuilding, reconstruction, or repair, then the insurance proceeds shall be paid by the Board of Directors of the Association, as insurance trustee, to the owners, including contract sellers and first mortgagees, of the townhouse units damaged or destroyed, as their interests may appear; provided, however, that if any portion of such insurance proceeds are payable as the result of damage or destruction to the common area and facilities, such proceeds shall be retained by the Association for the benefit of the townhouse unit owners.

(e) As soon as possible after the occurrence of a casualty which causes damage to any part of the properties (hereinafter referred to as the "Casualty"), the Board of Directors shall obtain reliable and detailed cost estimates of the following:

(i) The cost of restoring all damage caused by the Casualty to the common areas and facilities (hereinafter referred to as the "Common Area and Facilities Costs"); and

(ii) The cost of restoring that part of the damage caused by the Casualty to each townhouse unit which is or would be covered by insurance held by the Association without regard to the policy limits of such insurance (hereinafter referred to as the "Townhouse Unit Costs").

(f) If repair or restoration is to be made pursuant to this Section 10.6, all insurance proceeds available to the Association with respect to the Casualty shall first be applied to the payment of the actual Common Areas and Facilities Costs and the balance thereof, if any, shall thereafter be applied to the payment of the actual Townhouse Unit Costs. However, if such insurance proceeds are not sufficient to cover the actual costs, then an assessment shall be made against the townhouse unit owners by the Association in the following manner:

(i) All townhouse unit owners shall be assessed equally for the payment of the estimated Common Areas and Facilities Costs not otherwise paid for by insurance held by the Association.

(ii) Each owner of a damaged townhouse unit shall be assessed in an amount equal to his actual Townhouse Unit Costs less the proceeds of insurance paid or payable with respect to his townhouse unit. The amount of such assessment shall be paid by the townhouse unit owner to the Association at the time a contract is entered into by the Association for such repair or reconstruction. If a townhouse unit owner shall fail to pay his share of the costs at the time requested, no repair or reconstruction work shall be performed in or to that townhouse unit except such work as shall be deemed by the Board of Directors to be absolutely necessary for the safety, protection, and appearance of the other townhouse unit owners until such share of the cost shall have been paid.

(g) Any reconstruction or repair shall be substantially in accordance with the plans and specifications for the original building, or if not, then according to plans and specifications approved by the Board of Directors of the Association.

ARTICLE 11 ASSOCIATION

The Association shall fulfill its functions pursuant to the following provisions:

11.1. Limitations Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair parts of the properties, the Association shall not be liable to townhouse unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association.

11.2. Restraint Upon Assignment of Shares in Assets. The share of a townhouse unit owner in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in

any manner except as an appurtenance to his townhouse unit.

11.3. Approval or Disapproval of Matters. Whenever the decision of a townhouse unit owner is required upon any matter, whether the subject of an Association meeting, such decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

11.4. Voting Rights. Members of the Association shall be entitled to voting rights as set forth in Article 5 of this Declaration.

11.5. Books of Receipts and Expenditures. The Board of Directors of the Association shall keep detailed accurate records, in chronological order, of receipts and expenditures affecting the common areas and facilities and the townhouse units and such record shall specify and itemize the maintenance and repair expenses of the common areas and facilities and of the townhouse units and any other expenses incurred. Such records and any vouchers authorizing payments shall be available for examination by townhouse unit owners at convenient hours of weekdays.

11.6. Managing Agent or Manager. The Board of Directors may employ for the Association a management company or a manager, at such compensation as shall be established by the Board of Directors, to perform such duties and services as the Board of Directors shall authorize. No management contract or agreement shall, however, be for a period longer than three (3) years from the date of execution, and all such management contracts or agreements shall contain a provision allowing termination thereof by the Board of Directors at any time, with or without cause, on ninety (90) days prior written notice to the manager or management company.

11.7. Notification to First Mortgagees. The Association, within thirty (30) days following default by townhouse unit owner, shall notify the holder of the first mortgage of a townhouse unit whose name and address have theretofore been furnished to the Association, of any uncured default by the mortgagor in the performance of the mortgagor's obligation under this Declaration, the Bylaws, and the Rules and Regulations of the Association. In the event a townhouse unit shall have been sold on contract and an affidavit delivered to the Association as required by Section 11.11 of this Declaration, the Association shall, within thirty (30) days following default by a contract purchaser, notify the contract seller of any uncured default by the contract purchaser in the performance of the contract purchaser's obligation under this Declaration, the Bylaws, and the Rules and Regulations of the Association.

11.8. Legal Action. The Association shall have the right and authority, but not the obligation, for and on behalf of the townhouse unit owners to initiate or defend any legal action or claim arising out of their ownership of townhouse units, and to negotiate any settlement thereof as a special assessment that may be levied against any townhouse unit or against the Common Area.

11.9. Borrow Money. The Board of Directors shall have the right to borrow money

to meet requirements from time to time for working capital, common expenses, and emergencies; provided, however, that no single loan shall exceed \$10,000.00, loans at any time outstanding shall not exceed \$100,000.00 in the aggregate, and no loan shall be entered into having a maturity date in excess of five (5) years. Any loan or loans in excess of such limits or for a longer maturity shall be made only with the affirmative vote in person or by proxy of at least 80% of the townhouse unit owners. Loans on townhouse units acquired by the Association shall not be deemed included in the limitations of this section.

11.10. Committees. The Board of Directors of the Association may establish committees for such purposes as it shall deem advisable, and may appoint an Executive Committee consisting of not more than three (3) Board members to act for and on behalf of the Board between meetings of the Board.

11.11. Change of Membership in Association. Change of membership in the Association shall be established by recording a deed or other instrument in the Office of the Register of Deeds of Riley County, Kansas, establishing a record title to a townhouse unit and the delivery to the Association of a copy of such instrument. The owner designated by such instrument shall thereby become a member of the Association, and the membership of the prior owner shall thereby be terminated. In the event a townhouse unit shall be sold pursuant to a contract by the terms of which the record title to the townhouse unit shall not pass until full payment of the purchase price has been made by the contract purchaser, an Affidavit of Equitable Interest setting forth the name of the contract purchaser and a description of the townhouse unit sold shall be made by both the contract seller and the contract purchaser, and recorded in the Office of the Register of Deeds of Riley County, Kansas. A copy of such Affidavit of Equitable Interest shall be provided to the Association, together with the address of the contract seller to which notices required by this Declaration or the Bylaws shall be mailed. The contract purchaser as named in such Affidavit of Equitable Interest shall thereupon be considered the owner of the townhouse unit described therein for all purposes of this Declaration, the Bylaws, and Rules and Regulations of the Association, and, by entering into such purchase contract, agrees to assume all obligations imposed upon the owner of such townhouse unit as are imposed by The Kansas Townhouse Ownership Act, this Declaration, the Bylaws, and Rules and Regulations of the Association. In no event, however, shall the contract seller be released from any obligations as the owner of the townhouse unit described in such Affidavit until a deed conveying fee simple title to the townhouse unit to the contract purchaser shall have been recorded in the Office of the Register of Deeds of Riley County, Kansas, and a copy of such deed delivered to the Association. In lieu of recording a deed with the Register of Deeds, a final order entered by a court of competent jurisdiction transferring ownership of a townhouse unit shall transfer such title, provided a certified copy of such final order is delivered to the Association.

ARTICLE 12 USE OF THE PROPERTIES AND RESTRICTIONS

12.1. Common Areas and Facilities. The common areas and facilities shall be used

only for the purposes for which they are reasonably suited and only for such purposes which are incidental to the use and occupancy of the townhouse units.

12.2. Buildings and Townhouse Units. The townhouse units are to be used for providing living accommodations for the townhouse unit owners, and for related uses and enjoyment. Notwithstanding anything herein to the contrary, Declarant may retain ownership of one or more townhouse units for use as models and sales and/or promotion offices in connection with the sale or rental of townhouse units.

12.3 Dwelling Quality and Size. All improvements shall be constructed of good and suitable material and be of first class workmanship. The ground floor area of any structure shall be not less than that provided by Zoning Ordinance of the city of Manhattan, Kansas.

12.4 Maximum Height. The maximum height of a structure shall not exceed the height provided by Zoning Ordinance of the city of Manhattan, Kansas.

12.5 Occupancy Restrictions. The number of persons who shall be permitted to occupy a townhouse unit may be restricted by the vote of 80% of the townhouse unit owners at an annual or special meeting of such owners.

12.6. Lawful Use. No offensive or unlawful use shall be made of the properties, and all valid laws, zoning ordinances, and regulations of all governmental bodies having jurisdiction over the properties shall be observed. The obligation of complying with requirements of governmental bodies as to the maintenance, modification, or repair of any part of the properties, shall be imposed on the same person who has the obligation to maintain and repair such property by the terms of this Declaration.

12.7. Leasing. No townhouse unit shall be rented for transient purposes, or, without the prior written approval of the Board of Directors, for any period of less than twelve (12) months or to more than four (4) persons. No more than four (4) persons shall be entitled to reside in any leased townhouse unit. No townhouse unit owner shall be entitled to rent his townhouse unit if he is delinquent in the payment of any assessment required by this Declaration. Any lease or rental agreement pertaining to a townhouse unit shall be approved by the Board of Directors prior to any lessee or tenant taking occupancy thereunder.

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The Board of Directors may require standardized leases or rental agreements with respect to all townhouse units; provided, however, that the amount of rent shall not be subject to approval or standardization by the Board of Directors. All leases or rental agreements shall contain a provision to the effect that the rights of the tenant to use and occupy the townhouse unit shall be subject and subordinate to all respects to the provisions of this Declaration, the Bylaws, and to the Rules and Regulations of the Association. The provisions of this Section 12.7 shall not apply to any institutional mortgagee of any townhouse unit who obtains possession of a townhouse unit as a result of any remedies provided by law or in such mortgage, as a result of a foreclosure sale or other

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judicial sale, or as a result of any proceedings, arrangements, or deed in lieu of foreclosure.

12.8. Sale. Subject to this Declaration, the Bylaws, and the Rules and Regulations, sale of a townhouse unit shall be unrestricted.

12.9. Temporary Structures. No structure of a temporary character (trailer, basement, tent, shack, barn, or out building) shall be used at any time as a residence, either temporarily or permanently; provided this restriction shall not apply to temporary structures while used in connection with the construction of improvements on the Property.

12.10. Trash and Rubbish. No part of the Property shall be used as a dumping pound for trash, rubbish or other waste. Each townhouse unit owner shall provide suitable receptacles for the temporary storage and collection of refuse, trash, and rubbish and all such receptacles shall be screened from public view and protected from disturbance. No burning of trash and rubbish shall be permitted.

12.11. Animals. No animals, livestock, horses or poultry of any kind, except household pets, shall be kept or raised. Dogs, cats and household pets may be kept, but not raised or bred for commercial purposes, as long as they are confined by fence, leash or other enclosure to the townhouse unit owned by their owner, and as long as they are not a nuisance to the other townhouse unit owners. The pet owners will also be responsible for the cleanup and maintenance of their pets in the common areas.

12.12. Parking. Boats, trailers, pick-up trucks and campers, motor-homes, mini-motor homes or other trucks larger than one ton, and the like vehicles shall be stored or parked only if they are in an enclosed garage. On street parking will be allowed on only one side of the street for a maximum 24 hour period. Snow removal on driveways to be provided through the Home Owners Association Dues.

12.13. Landscaping. Courtyards of each townhouse unit shall, at all times, be kept clear of weeds or other unsightly growth.

12.14. Signs. No signs of any kind shall be displayed to the public view on any lot except one sign of not more than four (4) square feet, advertising the property for sale or rent, or signs of any size used by Declarant to advertise the property during the development and sales period. All other signs erected must be approved by the Board of Directors.

12.15. Buildings or Uses Other Than for Residential Purposes. No lot, building or structure of any sort may be placed, erected, or used for business, professional, trade or commercial purposes on the properties; provided, however, this prohibition shall not apply to:

(a) any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the properties; or

(b) any portion of a building used by Declarant for a manager's office or a sales office, or by the Association for its office; or

(c) any business approved in writing by the Association. The only types of businesses which will be considered under this paragraph are those which do not involve employees other than the owners, outdoor equipment or additional street traffic, such as day care centers, beauty/barber shops, etc. *

12.16. Antennas and Clotheslines. No external television or radio antenna shall hereafter be erected on or about any lot or building except with the written approval of the Board of Directors of the Association or its architectural committee. No clotheslines, clothes' racks, or clothes' hangers may be constructed or used unless completely concealed within enclosed areas of a lot or townhouse unit.

12.17. No Noxious or Offensive Activities Permitted. No noxious or offensive activity shall be carried on within the properties, nor shall any trash, ashes, or other refuse be thrown, placed, or dumped upon any exposed area nor shall anything ever be done which may be or become an annoyance or nuisance to the owners with the properties which interferes with the peaceful possession and proper use of a lot or townhouse unit by its owner. Each townhouse unit owner shall refrain from making or permitting any disturbing noise by himself, his family, servants, employees, agents, visitors, licensees, lessees, and pets, and to refrain from permitting anything by such persons or pets that will interfere with the rights, comfort, or convenience of the other townhouse unit owners.

12.18. Fences and Enclosures. No fences or enclosures of any type or nature whatsoever shall be constructed, erected, placed, or maintained on or about any building.

12.19. Unoccupied or Unsupervised Living Units. No living unit shall be left unoccupied for a period greater than three (3) months; provided, however, that the Board of Directors shall consent to a townhouse unit being left unoccupied for a period greater than three (3) months if, in the sole discretion of the Board of Directors, the townhouse unit owner has made provision for regular inspection and interior maintenance of such townhouse living unit during the period such living unit shall be unoccupied, but in no event shall a living unit remain unoccupied for a period of more than six (6) months. *

12.20. Drainage. Each townhouse unit owner shall refrain from interference with the established drainage pattern over his or from adjoining or other townhouse units, and shall make adequate provision for proper drainage from any such other townhouse unit in the event the established drainage over his townhouse unit is changed or altered.

12.21. Storage. No storage of any kind shall be allowed at any time on a lot except within the private enclosed townhouse unit or appurtenant garage, and any such storage shall be maintained in a manner as not to be exposed to public view. Storage within a garage shall not be so

great as to cause a townhouse unit owner not to use his garage for the purpose of parking his vehicles. No boat, camper, trailer, truck, mobile home, or self-propelled recreational vehicle of any kind whatsoever shall be parked, stored, or otherwise located at any location within the properties except for a period of time reasonably necessary for loading or unloading of persons or personal property into or from such vehicle by a townhouse unit owner.

12.22. Repairs of Vehicles on Properties. No major repair, rebuilding, or maintenance of any vehicle shall be permitted except within the private enclosed garage, if any, of a townhouse unit owner. No major repair, rebuilding, or maintenance of any vehicle shall be permitted in open parking areas. This restriction shall include, but is not limited to, automobiles, trucks, campers, trailers, and boats.

ARTICLE 13 PARTY WALLS

13.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of a building upon the properties and placed on the dividing line between two townhouse units shall constitute a party wall, and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

13.2. Sharing of repair and maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the townhouse unit owners who make use of the wall.

13.3. Destruction by fire or other casualty. If a party wall is destroyed or damaged by fire or other casualty, other than by the willful act or negligence of a townhouse unit owner of a townhouse unit that is adjacent to a party wall, each of the townhouse unit owners of the townhouse units that are adjacent to each party wall shall bear an equal share of the expense to repair or rebuild the party wall. If a townhouse unit owner of a townhouse unit that is adjacent to a party wall or his guests, tenants, lessees, invitees, or licensees shall wilfully, or negligently cause damage to or destruction of a party wall, such townhouse unit owner shall bear the entire cost of repair or reconstruction thereof.

13.4. Weatherproofing. A townhouse unit owner who by his negligent or willful act causes the party wall to be damaged or exposed to the elements shall, notwithstanding the provisions of article 7 hereof, be assessed for the entire cost of furnishing the necessary repair or protection against such elements.

13.5. Arbitration. In the event of any dispute pertaining to a party wall, or arising under the provisions of this article 13, such dispute shall be submitted to and determined by a board of three arbitrators as follows: The party desiring to have the matter in dispute submitted to arbitration shall give the other party written notice of such desire and shall name one of the

arbitrators in such notice. Within ten (10) days after the receipt of such notice, the other party shall name a second arbitrator, and in case of failure so to do, the arbitrator selected or appointed by a judge of the Riley County, Kansas, District Court, acting in a nonjudicial capacity, and the two arbitrators so appointed in either manner shall select and appoint a third arbitrator, and in the event the two arbitrators so appointed shall fail to appoint the third arbitrator within ten (10) days after the naming of the second arbitrator, either party may have the third arbitrator selected or appointed by said judge, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement, or difference, and the decision of any two of them shall be final, conclusive, and binding upon all parties. In all cases of arbitration, the parties hereto shall each pay the expenses of his attorneys' and witnesses' fees, and all other expenses of such arbitration shall be divided equally between the parties.

ARTICLE 14 CONDEMNATION PROCEEDINGS

14.1. Condemnation of Common Areas and Facilities. In the event of condemnation or the exercise of the power of eminent domain whereby the federal government, the state, a political subdivision, or any other corporation, agency or authority having the power of condemnation or eminent domain seeks to acquire any of the common areas or facilities, such condemning authority may conduct negotiations with the Board of Directors of the Association and the Board of Directors may execute and deliver the appropriate conveyance in return for the agreed consideration. The Board of Directors shall allocate such consideration, whether received through negotiation or condemnation, to the repair, replacement, or restoration of common areas and facilities, and any amount then remaining may be used to discharge the Association's obligation imposed by this Declaration.

14.2. Condemnation of Townhouse Units. In the event that all of any part of the townhouse units or other property not owned by the Association shall be taken by condemnation or the exercise of the power of eminent domain, the Townhouse Unit Owners shall be free to assert their respective claims against the condemning authority, including any claims for severance damage, and to be entitled to the proceeds which are properly allocable to the respective townhouse unit taken or condemned. Nothing contained in this Article 14 shall be construed as giving any townhouse unit owner priority over any rights of mortgagees in case of distribution of a condemnation award to any Townhouse Unit Owner.

ARTICLE 15 MORTGAGES

15.1. Notice to Board of Directors. A townhouse unit owner who mortgages his townhouse unit shall notify the Board of Directors of the name and address of his mortgagee and the Board of Directors shall maintain such information in a book entitled "Mortgages of Townhouse

Units".

15.2. Notice of Unpaid Common Charges. The Board of Directors, whenever so requested in writing by any mortgagee or contract seller of a townhouse unit, shall promptly, in writing, notify the mortgagee or contract seller of any default in the performance by the individual townhouse unit mortgagor or contract purchaser or any obligation under this Declaration and any then unpaid common charges assessed against the townhouse unit.

15.3. Notice of Default. The Board of Directors, when giving notice to a townhouse unit owner of a default in payment of common charges or other default, shall within thirty (30) days following such default send a copy of such notice to the townhouse unit owner, including any contract seller, and to the holder of a mortgage covering such townhouse unit whose name and address have theretofore been furnished to the Board of Directors.

ARTICLE 16 ARCHITECTURAL CONTROL

16.1. Architectural Control Committee. The Architectural Control Committee, hereinafter referred to as "Committee", shall consist of the members of the Board of Directors of the Association and a majority of the Committee may designate a representative to act for it. In the event of the death or of the resignation of any member of the Committee, the remaining members shall have full authority to designate a successor to fill the vacancy. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services rendered under this covenant.

16.2. Approval of plans. Before anyone shall commence the construction, remodeling, addition to or alteration of any townhouse unit, building, wall, fence, coping, or other structure whatsoever, there shall be submitted to the Committee sufficient building plans (including plot plans and specifications) and sufficient description for each allowed type of improvement for its review and approval or rejection. Approval by the Architectural Control Committee of all fences as to type, height, quality of materials and workmanship shall be required. In no event shall the Committee or any other individual member of the Committee be liable to any person for the Committee's action in connection with submitted plans and specifications, unless it shall be shown that the Committee or said member acted with malice or wrongful intent.

16.3. Procedure. The Committee's approval or disapproval as required by these covenants shall be in writing. In the event the Committee or its designated representative fails to give written approval or disapproval within thirty (30) days after plans and specifications have been submitted to it, or in any event if no suit to enjoin the construction has been commenced prior to the completion hereto, approval will not be required and the foregoing covenants shall be deemed to have been fully complied with.

ARTICLE 17
TOWNHOUSE UNITS SUBJECT TO DECLARATION, BYLAWS, AND
RULES AND REGULATIONS

All present and future owners, tenants, and occupants of the townhouse units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws of the Association, and Rules and Regulations of the Association, as they may be amended from time to time. The acceptance of deed or conveyance or the entering into of a lease or the entering into occupancy of any lot and townhouse unit situated thereon shall constitute an agreement that the provisions of this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such lot and townhouse unit situated thereon, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. A townhouse unit owner shall automatically be a member of the Association, and shall remain a member of the Association until such time as his legal ownership of a townhouse unit ceases for any reason, at which time his membership in the Association shall automatically cease. Failure of a townhouse unit owner to comply with this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time, shall entitle the Association or other townhouse unit owners to the following relief, in addition to the remedies that may be provided by law:

17.1. Enforcement. The Association, or any townhouse unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration, the Bylaws, or the Rules and Regulations of the Association. Failure by the Association or by any townhouse unit owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the further right by three-fourth's vote of its entire Board of Directors to levy fines up to and including Two Thousand Five Hundred Dollars (\$2,500.00), against any townhouse unit owner who has breached or threatens to breach any of the provisions of this Declaration, the Bylaws of the Association, or the Rules and Regulations of the Association, and to charge such fine as an additional assessment against such townhouse unit owner in accordance with article 8 above.

17.2. Negligence. A townhouse unit owner shall be liable for the expense of any maintenance, repair, or replacement to or of the common areas and facilities or any townhouse unit, including his own, rendered necessary by his act, neglect or carelessness, or by that of any member of his household, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not fully covered by the proceeds of insurance carried by the Association. A townhouse unit owner shall pay the Association the amount of any increase in its insurance premiums occasioned by the townhouse unit owner's use, misuse, occupancy, or abandonment of a townhouse unit or its appurtenances, or of the common areas and facilities.

17.3. Costs and Attorney's Fees. In any proceeding arising because of an alleged

failure of a townhouse unit owner to comply with the terms of the Declaration, the Bylaws, or the Rules and Regulations of the Association, as they may be amended from time to time, the Association shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

17.4. Abatement and Enjoinment of Violations by Townhouse Unit Owners. The violation of any of the Rules and Regulations adopted by the Board of Directors, or the breach of any Bylaw, or the breach of any provisions of this Declaration, shall give the Board of Directors the right, in addition to any other rights set forth herein: (a) to enter on or in the lot or townhouse unit on or in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting townhouse unit owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; and/or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. In the event any action is brought against a townhouse unit owner claiming, asserting or enforcing a lien against the townhouse unit or common areas and facilities, the townhouse unit owner shall give prompt written notice thereof to the Board of Directors.

17.5. Remedies Cumulative. All rights, remedies and privileges granted to the Association or townhouse unit owner or owners pursuant to the terms, provisions, covenants, or conditions of this Declaration, the Bylaws or the Rules and Regulations of the Association, shall be deemed to be cumulative and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other additional rights, remedies or privileges as may be available to such party at law or in equity.

ARTICLE 18 AMENDMENTS

This Declaration may be amended only by the Declarant until Class B membership shall be terminated pursuant to Section 5.2 hereof. This Declaration may thereafter be amended in the following manner:

18.1. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

18.2. Resolution of Adoption. A resolution of adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by any four (4) members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at or prior to the meeting. Except as elsewhere provided, any amendment of this Declaration shall require the approval of the owners of eighty percent (80%) of the townhouse units.

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subject of a foreclosure or other judicial sale, in the name of the Board of Directors or its designee, corporate or otherwise, on behalf of all townhouse unit owners, and to convey, sell, lease, sublease, mortgage, or otherwise deal with any such unit so acquired or leased.

19.3. Right of Access. The manager or any other person authorized by the Board of Directors shall have the right of reasonable access to each townhouse unit for the purpose of correcting any condition originating in such townhouse unit and/or threatening another townhouse unit or the common areas and facilities, and for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common areas in such townhouse unit or elsewhere in the building in which such townhouse unit is located, provided that requests for entry shall be made in advance and any such entry shall be at a time that is reasonably convenient to the townhouse unit owner. In case of an emergency situation, such right of entry shall be immediate, even though the townhouse unit owner may not then be present.

18.3. Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted, which certificate shall be executed by the officers of the Association with all the formalities of a deed. The amendment shall be effective when such certificate and a copy of the amendment are recorded in the Office of the Register of Deeds of Riley County, Kansas.

ARTICLE 19
MISCELLANEOUS

19.1. Board of Directors May Act for Owners. Whenever in this Declaration or the Bylaws, the Board of Directors or the members thereof are authorized or directed to acquire, hold, lease, mortgage, or convey any part of or interest in the properties, or to acquire any lien thereon, or to acquire or receive the proceeds to any policy of insurance or other monies, goods, or chattels, with respect to the properties, such action shall be carried out in the names of the members of the Board of Directors and their successors in office from time to time, as trustees, on behalf of some or all of the townhouse unit owners, as the case may be.

19.2. Power of Attorney of Board of Directors. Each townhouse unit owner, by accepting title to a townhouse unit, thereby grants to the persons who shall from time to time constitute the Board of Directors, but subject to the terms and provisions of this Declaration, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any lot and the townhouse unit thereon whose owner desires to surrender, sell, or lease the same, or which may be subject of a foreclosure or other judicial sale, in the name of the Board of Directors or its designee, corporate or otherwise, on behalf of all townhouse unit owners, and to convey, sell, lease, sublease, mortgage, or otherwise deal with any such unit so acquired or leased.

19.3. Right of Access. The manager or any other person authorized by the Board of Directors shall have the right of reasonable access to each townhouse unit for the purpose of correcting any condition originating in such townhouse unit and/or threatening another townhouse unit or the common areas and facilities, and for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other common areas in such townhouse unit or elsewhere in the building in which such townhouse unit is located, provided that requests for entry shall be made in advance and any such entry shall be at a time that is reasonably convenient to the townhouse unit owner. In case of an emergency situation, such right of entry shall be immediate, even though the townhouse unit owner may not then be present.

19.4. Electric, Gas, Sewer, and Water Services. Electric, gas, water, and sewer services shall be supplied by the public utility companies serving the area directly to each townhouse unit through a separate meter, and each townhouse unit owner shall be required to pay the bills for electricity, gas, water, and sewer services consumed, used, or provided in or to his townhouse unit.

Electricity, gas, water, and sewers serving the common areas and facilities shall be separately metered, and the Board of Directors shall pay all bills for such utilities consumed in such portions of the common areas and facilities, as a common expense.

19.5. Limitation of Restrictions. The foregoing restrictions shall not apply to the activities of the Association or the activities of the Declarant, its agents and employees. The Declarant may, while constructing and selling townhouse units in or upon such portions of the property as Declarant may determine, maintain such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units, and signs.

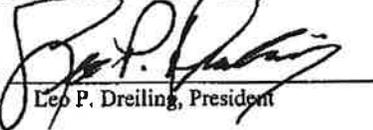
19.6. Severability. The invalidity in whole or in part of covenants or restrictions, or any paragraph, subparagraph, sentence, clause, phrase or word, or other provision of this Declaration shall not affect the validity of the remaining portions thereof. The determination that any provision of the Townhouse Ownership Act or any section, sentence, clause, phrase or word or the application hereof in any circumstance is invalid, and shall not affect the validity of any provision of this Declaration not in direct conflict with such holding or determination.

19.7. Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, modify, or supplement this Declaration or the intent of any provision thereof.

19.8. Construction. Whenever the context so permits, the use of plural shall include the singular, the singular plural, and the use of any gender shall be deemed to include all genders.

IN WITNESS WHEREOF, Declarant and Owners have executed this Declaration the day and year first above written.

WESTBANK DEVELOPMENT CORP.

By: 
Leo P. Dreiling, President

DECLARANT

LITTLE KITTEN CREEK, INC.

By: 
Frank A. Tillman, President

Karyl A. Croft
Karyl A. Croft

OWNERS

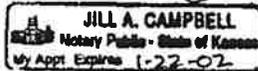
STATE OF KANSAS, COUNTY OF RILEY, ss:

BE IT REMEMBERED, that on this 28 day of June, 1999, before me, the undersigned, a notary public in and for this county and state aforesaid, came Leo P. Dreiling, as President of Westbank Development Corp., known to me to be the same person who executed, the foregoing Declaration and such person duly acknowledged the execution of the same.

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

Jill A. Campbell
Notary Public

My appointment expires:



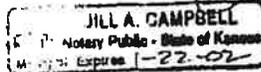
STATE OF KANSAS, COUNTY OF RILEY, ss:

BE IT REMEMBERED, that on this 30 day of June, 1999, before me, the undersigned, a notary public in and for this county and state aforesaid, came Frank A. Tillman, as President of Little Kitten Creek, Inc., known to me to be the same person who executed, the foregoing Declaration and such person duly acknowledged the execution of the same.

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

Jill A. Campbell
Notary Public

My appointment expires:



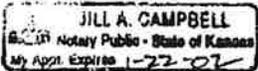
STATE OF KANSAS, COUNTY OF RILEY, ss:

BE IT REMEMBERED, that on this 28 day of June, 1999, before me, the undersigned, a notary public in and for this county and state aforesaid, came Karyl A. Croft, known to me to be the same person who executed, the foregoing Declaration and such person duly acknowledged the execution of the same.

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

Jill A. Campbell
Notary Public

My appointment expires:



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