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AMENDED AND RESTATED WESTCHESTER DECLARATION OF COVENANTS,
CONDITIONS, RESTRICTIONS AND DEDICATION OF EASEMENTS

THIS DEDICATION is made and entered into this 25th day of June, 2002, by Westchester Homes Association, a Kansas not-for-profit corporation, by the undersigned owners of said party hereinafter being referred to as the Association, and relates to the land described in Exhibit A and incorporated herein.

WHEREAS, Westchester Venture, a Kansas partnership, hereinafter referred to as Declarant, prepared (1) Westchester Declaration of Covenants, Conditions, Restrictions and Dedication of Easements on May 15, 1985 and caused it to be recorded in the office of the Johnson County Register of Deeds at Vol. 2159 and Page 348 on May 16, 1985; (2) Westchester Declaration of Covenants, Conditions, Restrictions and Dedication of Easements on October 13, 1986 and caused it to be recorded in the office of the Johnson County Register of Deeds at Vol. 2436 and Page 348 on October 6, 1986; and (3) Westchester Declaration of Covenants, Conditions, Restrictions and Dedication of Easements on February 14, 1989 and caused it to be recorded in the office of the Johnson County Register of Deeds at Vol. 2974 and Page 475 on April 24, 1989.

WHEREAS, Westchester Venture no longer has any interest in the affected real estate and its interest was terminated by virtue of said Declarations.

WHEREAS, the Declarations provide for the manner of amending said Declarations, and the undersigned owners, being at least 60 percent of all members of the Association, and with the consent of all first mortgagees of record desire to amend same in certain respects.

STATE OF KANSAS }
COUNTY OF JOHNSON } SS
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REBECCA L. JAVIS
REGISTER OF DEEDS

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Therefore, in consideration of the premises and the mutual covenants, conditions, restrictions and dedication set forth in the Declarations and this Amended and Restated Declaration and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by all interested parties, and intending to be legally bound hereby, the undersigned parties hereby amend the previously described Declaration as follows:

PURPOSE

The purpose of this Amended Declaration is to retain beneficial and highly desirous mechanism whereby Westchester may continue to be a high quality residential area. This Amended Declaration is in the nature of a constitution setting forth the framework within which such desired result may be obtained.

Easements for vehicular access, parking, utilities and beautification are among the benefits which must be established by this Declaration. For beauty, utility and continuing high values over the years, provisions must be made for the maintenance of all buildings and improvements in Westchester and such provisions must include an enforceable means of obtaining funds for the carrying out of these advantageous programs.

THE COMPOSITION OF WESTCHESTER

The Certificates of survey of Westchester, which have been filed for record and will show Units as follows: Townhouses designated alphabetically within Lots that are designated numerically, which will be part and parcel of the residential tract and are suitable for diverse ownership. The remainder of said lots is shown thereon as Common Area, and the owners of each such home have a non-exclusive easement interest in said Common Area. The Common Area is owned by a not-for-

profit corporation which establishes the use of the Common Area from time to time. This not-for-profit corporation shall also be charged with various other duties, all as set forth in this Declaration.

The Declaration also allows the Association to add additional land to Westchester, but does not require it.

THE DECLARATION

Association hereby declares that all of the land described above and filed for record of Westchester and presently consist of, or providing for some eighty (80) townhouses and single family homes is, and shall be held, used, occupied, sold, leased, rented, conveyed, hypothecated or encumbered, and improved subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said real property. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the above described property or any part thereof, and shall inure to the benefit of each and every such party, but nothing contained herein shall be deemed to constitute a dedication of any of said land or any part or parts thereof to public use.

ARTICLE I

DEFINITIONS

“ASSOCIATION” shall mean the not-for-profit corporation formed and originally owned by Declarant for the purpose of taking the fee simple title to the Common Areas and assuming the obligations of maintaining and operating the Common Areas in accordance with the provisions

hereof. When reference is made herein to the Association, it shall be deemed to refer to the Association as the fee owner of the Common Areas.

“MANAGEMENT COMPANY” shall be the entity hired by the Association to carry out the obligations of the Association, including, but not limited to, maintenance of the Common Areas.

“UNIT” shall mean the building or portion of a building which is designed and used exclusively for single family residential purposes except as may be herein provided.

“ENCLOSED FLOOR AREA” as used herein shall mean and include in all cases areas on the first and second floors of the Units, enclosed and finished for all-year occupancy, and all atriums, computed on outside measurements or center of common walls of the residences, but shall not mean or include any areas in basement, garages, porches, attic, or patio.

“COMMON AREAS AND FACILITIES” shall mean that part of the real estate and all improvements located thereon owned by the Association for the common use and enjoyment of the residents of Westchester. Common Areas and facilities shall include:

(a) All real estate owned in fee simple by the Association evidenced by warranty deed or deeds from the Declarant to the Association, recorded in the office of the Register of Deeds for Johnson County, Kansas.

(b) Any, if they exist, swimming pool, tennis, court(s) playground equipment, recreational facilities, structure(s), trees, landscaping, lighting equipment, decorative equipment or other improvements located upon real estate owned by the Association.

(c) All paved streets and open parking as located upon real estate owned by the Association.

(d) All installations of central services for the benefit of more than one owner such as television antennas, trash receptacles, pipes, wires, conduits, sewers, water lines and other public utility lines and facilities situated thereon.

(e) All easements, rights and appurtenances belonging thereto necessary to the existence, maintenance and safety of the project.

(f) All personal property owned by the Association intended for use in connection with the operation of any swimming pool, tennis court(s), recreational facilities, building(s), structure(s), or other facilities of the Association.

“PERMITTED ENCROACHMENTS” shall mean the original balconies, decks and patios constructed with each Unit, which of necessity encroach into the Common Area. No additional balcony, deck or patio shall be constructed, nor any additional attachment or modification be made to any existing balcony, deck or patio, without the consent required by this Declaration.

“OWNER” shall mean the owner in Fee Simple of any Unit.

“TENANT” shall mean the individual(s) renting a Unit, subject to the provisions of this Declaration, from an Owner.

“PROJECT” shall mean Westchester as it may ultimately be (if enlarged from time to time) fully developed.

“MORTGAGE” shall mean and refer to any such person, persons, or entities under a first deed of trust or first mortgage secured by a lot and Unit.

“DECLARANT” shall mean and refer to Westchester Venture, a partnership.

“WESTCHESTER” shall mean and refer to the subdivision in Lenexa, Kansas, approved for development without, however, any commitment, undertaking, or promise whatsoever to do so by Declarant in a number of sections of phases within the approximately fifteen (15) acre tract lying in Lenexa, in Johnson County, Kansas, and legally described as shown in Exhibit A.

ARTICLE II

ENLARGEMENT

Association may, from time to time, by filing for record in the office of the Register of Deeds, Johnson County, Kansas, certificates of survey subject additional land owned now as a part of said “Westchester” aforesaid approximate fifteen (15) acres, or hereafter acquired by it to the covenants, conditions and restrictions set forth herein, and create additional easements and Common Areas provided, however, that any such land so added must be devoted to residential purposes only (except as herein provided) and necessary accessory uses such as Common Areas, and the development thereof must be reasonably compatible, but without restrictions as to size or cost of buildings, to prior developments in Westchester. The addition(s) of land, as above provided, shall be accomplished by Association executing and recording at said times and from time to time an amendment to this Declaration in the Office of the Register of Deeds of Johnson County, Kansas, describing the added land, provided, however, that such amendment or supplementary Declaration may contain such additions and modifications of the covenants, conditions and restrictions set forth in this Declaration applicable solely to said additional properties as may be necessary or desirable as solely determined by Association. In no event, however, shall such supplementary Declaration

modify or add the covenants established by this Declaration for property set forth and legally described on page one without the written consent of sixty percent (60%) or more of the then members of the Association.

In the event that additional land is annexed in accordance with the terms of this Article II, the owners of the Units described on page one (1) hereof shall be granted necessary easements for ingress and egress to the Common Areas located on such annexed land and the owners of the Units described on page one (1) hereof shall in return grant easements for ingress and egress to the Common Areas located on the land described on page one (1) hereof to the owners of the Units to be located in the annexed area.

Upon a merger or consolidation of the Association with another not-for-profit corporation (such as condominium association adopted with regard to other property with Westchester subdivision which might at a future time be developed as a condominium) as provided in its Articles of Incorporation, its properties, rights and obligations may by operation of law, be transferred to another surviving or consolidated not-for-profit corporation, or, alternatively, properties, rights and obligations of another not-for-profit corporation pursuant to a merger. The surviving or consolidated not-for-profit corporation may administer the covenants, conditions and restrictions established by this Declaration for the existing property, together with the covenants and Restrictions established upon any other property as one project. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants, conditions and restrictions established by this Declaration for the existing property and for any additions thereto established by a supplementary declaration.

ARTICLE III

MEMBERSHIP

1. Membership and Voting Rights in the Association. Every person or entity who is an owner of a fee simple interest in one or more Units shall be a member of the Association. Ownership of such Unit shall be the sole qualification of membership. When more than one person holds such interest in any Unit, all such persons shall be members and the vote for such Unit shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any one Unit.

2. Quorum, Proxies, Voting.

(a) Twenty-five percent (25%) of the outstanding memberships of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Association.

(b) At all meetings of the Association, a member may vote in person or by proxy executed in writing by such member. Such proxies shall be filed with the Secretary of the Association before or at the time of a meeting. No proxy shall be valid after twelve (12) months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his Unit. No one owner may vote more than one additional vote by proxy.

3. Articles of Incorporation and By-Laws. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be as set forth in its Articles of Incorporation and By-Laws. In any

event, if any provisions set forth in this Declaration applicable to notice, voting, and quorum requirements are in conflict with any provisions of Kansas laws applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Kansas laws shall control.

ARTICLE IV

COMMON AREAS AND FACILITIES RIGHTS -OF- OWNERS AND OF THE ASSOCIATION

1. Enjoyment. Subject to paragraph 2, of this Article, each resident of Westchester shall have a right and easement of enjoyment in and to the Common Areas and facilities, such easements shall be appurtenant to, and shall pass with the title to each lot and townhouse Unit. The membership in the Association of each owner shall be deemed to be conveyed or encumbered with the deed or mortgage applicable to each lot and townhouse Unit, even though such interest is not expressly mentioned or described in the conveyance, mortgage or other instrument. Each owner may use the Common Area and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other owners.

2. Regulations and Suspension of Rights. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Board of Directors of the Association to prescribe rules and regulations and fees governing the use, operation and maintenance of all Common Areas and facilities, including all swimming pool(s), tennis court(s), or other recreational facilities.

(b) The right of the Association to suspend the right of any owner to use all or part of said recreational facilities located upon Common Areas for any period during which any assessment against said owner remains unpaid.

(c) The right of the Association to charge reasonable admission and use fees for the use of any said recreational facilities to defray costs of the operation thereof.

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of the Declaration and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by sixty percent (60%) of the then Members of the Association has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of the proposed agreement and action thereunder is sent to each Member not less than ten (10) nor more than forty (40) days prior to the taking of any action.

(e) The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-way and/or easements for access or for the construction reconstruction, maintenance and/or repair of any utility lines or appurtenances whether public or private, to any municipal agency, public utility, or any other person; provided, however, that no such licenses, rights-of-way and/or easements shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the Common Areas.

(f) The right of the Association, acting by and through its Board of Directors, to open the Common Areas, or any portions thereof, to a wider public, all for such purposes and on such basis as the Board of Directors may from time to time consider appropriate.

(g) The right of the Board of Directors of the Association to fix penalties for the violation of said rules and regulations.

(h) The right of the Association to borrow money for the benefit of the Association and the owners of townhouse Units, provided however, the repayment of such loans shall not be or become the personal obligation of the owners of townhouse Units, and provided further that such loans shall not be secured by, or subject to any liens or encumbrances on the Common Areas and/or facilities and/or personal property thereof.

3. No Restrictions on Access to Units. The Board of Directors of the Association may not in any event, revoke, limit, restrict, or suspend in any way, the right of any owner to use and enjoy the private drive, streets and parking areas located upon the real estate owned by the Association. As a right running with real property, ownership of each lot and townhouse Unit shall include the right to use and enjoy all walks, pavement, driveways, parking areas, entrances and exits owned by the Association. There shall always be access by other pedestrians and vehicles to and from each lot and townhouse Unit to a public street or to a private street leading to such public street.

ARTICLE V

MAINTENANCE

Association does hereby set forth herein certain stipulations which shall govern the ownership or leasing of Units, and shall be binding on the Owners and Tenants of each Unit and

upon the Association. These stipulations, without being limited thereto, relate to such things as interior and exterior maintenance and repairs, and are in detail as follows:

1. Each owner or tenant shall maintain the interior of each such Unit, and the inside of any fenced area, front and rear, and including patio area(s) and decks, in a neat, clean and orderly condition. This requirement of maintenance shall particularly extend to all items which can be seen externally, including exterior and interior cleaning of windows, and replacement of broken glass and burned out light bulbs, if any.

2. Maintenance of the exterior of any Unit shall be done in the following manner:

(a) each owner of a Unit shall have the sole responsibility, at the owner's sole cost and expense, whether caused by ordinary wear and tear, casualty or otherwise, to maintain, repair, replace, care for, or otherwise service the following portions of the Owner's Unit: (1) roof, mechanical equipment, screens, screen doors, chimneys, garage doors, windows, window treatments, shutters, doors, privacy fences, entrance ways, glass surfaces, patios, decks, porches, retaining walls, enclosed areas, masonry, walkways and driveways which access a unit, railings, supports, drainage systems, (2) utility systems to the Unit, and (3) all lawn, trees, shrubs, plant life, planting beds, and other landscaping which were planted or constructed by or on behalf of the previous, current or future owner of the Unit.

b) The Association shall maintain and replace all gutterings and eaves on all Units and shall be responsible for painting exterior building surfaces of all Units, when in the opinion of the Association's Board of Directors, after consultation with owners of the Units, it is deemed necessary. The Association may delegate its obligations to a management company.

3. Subject to reasonable rules and regulations to be promulgated by the Association, the Common Areas and facilities are hereby made available to the owners (and those legally holding under an owner) of each Unit and their respective invitees for reasonable use in common with other Owners (and those legally holding under an owner) and their respective invitees for the purpose for which such Common Areas and facilities are designated.

4. The cost of maintenance and upkeep of the Common Areas shall be divided equally among all of the Units which are from time to time subject to this Declaration. Such costs of maintaining the Common Areas (referred to herein as Common Areas costs) shall be the total cost necessarily expended for the proper operation, maintenance, repair and aesthetic appeal of the Common Area. Such costs shall include, but not by way of limitation, the following:

(a) All costs and-expenses of operating and maintaining said Common Areas including, but not limited to, exterior building surfaces, maintenance of all green areas (lawns), flower gardens, shrubs, trees, plants, including replacement or changing when deemed appropriate by the Association, parking areas, removal of snow and trash, policing and security measures, and maintenance and replacement of curbs, walkways, drainage and Common Areas lighting facilities and other parts and accessories in and to the Common Areas, and all items necessary for the operation and maintenance of the Common Areas including, but not limited to, water, electricity, gas, insurance of all types, supplies such as fertilizers, and garden necessities. In the event any common sewer service and/or utility line running to or connected with any building in Westchester becomes clogged, in need or repair, maintenance or replacement, then in any such event, the

Association shall be charged with the responsibility for prompt action and solution of any such difficulty or problem and it shall pay in toto therefor.

(b) The total cost of maintaining and repairing the "PRIVATE" streets as so designated on the recorded plat of Westchester. This shall include the streets within the subdivision except those specifically designated to public use. The cost of maintenance should further include the cost of maintaining all appurtenances to said "PRIVATE" streets including curbs, gutters, and storm drainage facilities unless designated to public use.

(c) Increases, if any, in real estate taxes and special assessments, if any, resulting from new or enlarged or improved facilities occurring after the original valuations and/or assessments and taxation, levied or assessed against the Common Areas.

(d) Depreciation shall not be included as a cost except in the case of tangible items that are used in the Common Areas.

(e) All costs of maintaining on-site security exclusive of individual Units. Security shall mean the operation and maintenance of security facilities such as burglar alarms, fire alarms, lighting rods and employment of security personnel and such other items of expense as determined from time to time by the Board of Directors of Association in maintaining as safe and as secure a complex as may be reasonably possible under all of the circumstances.

(f) Contingency reserves as determined from time to time by the Board of Directors of Association.

(g) Insurance premiums for all insurance secured by the Board of Directors of the Association pursuant to this Declaration. Regular fees and charges shall be used for the payment of

insurance premiums for public liability and property damage insurance covering all Common Areas and facilities and workman's compensation insurance to the extent deemed necessary by the Board of Directors to comply with any and all applicable laws, and for casualty insurance applicable to each lot and townhouse Unit, under a blanket policy of casualty insurance available under applicable Kansas law.

(h) Fee of the Management Company as set forth in Article VI of this Declaration.

(i) The payment of such other charges and expenses as may be elsewhere required or authorized by this Declaration or that the Board of Directors of the Association may from time to time determine necessary or desirable to meet the purposes of the Association as stated in its Articles of Incorporation, By-Laws and by this Declaration.

5. Failure to Maintain. If any Owner shall fail to maintain the exterior or interior of his Unit or the glass surfaces or interior patio area, courtyard or deck, thereof in a manner satisfactory to the Board, or if any Owner shall permit or perform or fail to perform any act or activity which may cause damage to his Unit, another Unit, the Common Areas, or the Common Area Facilities, or shall do anything which may be noxious or a nuisance or injure the reputation of the Subdivision, the Association, upon approval by two-thirds (2/3) vote of the Board, shall have the right, through its agents and employees, to enter upon said lot or into said Unit for repair and maintenance thereof, which entrance shall not be deemed, in any manner, trespass. The cost of any such repairs or maintenance shall be charged against such lot as a special assessment and shall be computed and collected as provided in these Declarations.

ARTICLE VI

MANAGEMENT COMPANY

The Association may employ, by contract, a Management Company to carry out all of the functions of the Association, as delineated in this Declaration. The negotiated and agreed fee to be paid such Management Company shall be on a fair, reasonable and competitive basis, and shall be adjusted upwards or downwards from time to time as any such contract or understanding may provide or upon termination. The Management Company, under the direction of the Association, shall perform all Common Area maintenance, and on-site security systems, if any, and shall keep appropriate books and records in accordance with generally accepted accounting principles. It is contemplated that the Management Company will be a profit making company with sufficient incentive to assure the Owners that they will receive high quality management service. All expenditures of the Management Company under its agreement with the Association, and the fee paid to the Management Company shall be included as Common Areas or Maintenance costs in accordance with the provisions hereof and such costs shall be allocated to the owners as herein provided.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

1. Creation of the Lien and Personal Obligation Assessments. Each Owner of a Unit, by acceptance of a Deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to pay to the Association all assessments or charges, general and special, to be fixed, established, levied and collected from time to time as herein

provided. Such assessments, together with such interest thereon and such costs of collection thereof as may be hereinafter provided, shall be a charge on the land and/or improvements and shall be a continuing lien upon the property against which each such assessment is made. Regardless of any alleged reason, claim, assertion or defense believed, advanced or made by any Unit Owner, timely payments are agreed to, and shall be made by any such Unit Owner of all such assessments. Payment of annual assessments on a monthly basis shall be in accordance with paragraph 3 of this Article hereinafter.

2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Project, and, in particular, for the improvements and maintenance of the Units and the Common Areas. In the event of any special assessments by the Association for capital improvements, the proceeds generated thereby shall be recorded in a special and designated account separately accounted for from the general funds Association on its books and records so as to be respective and pro rata tax-free contributions to the Association by each member.

3. Payment of Annual Assessments. Annual assessments or charges shall remain constant from January 1 thru December 31 of each year except as hereinafter set forth, and shall be subject to the following limitations thereon:

The annual assessment per Unit shall be payable in twelve equal monthly installments per Unit, which, as all monthly assessments, shall be paid, on or before the first day of each calendar month in each calendar year, and shall be deemed delinquent after the 10th day of such month. The

annual assessment may not be increased more than ten percent (10%) above the maximum assessment for the previous calendar year;

The annual assessment may be increased above the amount assessed in the previous year by an affirmative vote of at least sixty percent (60%) of all the then members who are present and voting in person or by proxy at a meeting called for such purpose by no less than ten (10) nor more than forty (40) days notice in writing to each such member stating the time, purpose, and place of said meeting;

After consideration and determination of current routine repair, maintenance, care and operational costs, and other needs of the Association, the Board of Directors shall levy the annual assessments for the forthcoming calendar year for each Unit payable monthly at an amount not in excess of the maximum allowable by this paragraph 3; and

It is understood and agreed that in determining and budgeting such assessments, the Association shall take into consideration the fee of the Management Company as well as the mandatory separate annual reserve for anticipated major repairs or replacements. Annual assessments for each Unit Owner payable monthly for the ensuing calendar year shall be established by the Association on the basis that said costs as estimated under the budget shall be borne equally by the Owners of such Units. In the event there is an excess of money collected from such annual assessments paid monthly over the costs of any such year, excluding, however, the total mandatory separate annual reserve accruing in the budget to provide required funds for repair or replacement of major items in the community, any such excess shall also be taken into consideration in preparing the budget and the annual assessments to be paid monthly for the following calendar year. All

computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with generally accepted accounting practices and, as part of the Common Areas cost, the Association may employ a certified public accountant to render a written audit of its operations for each calendar year, with a copy thereof being made available to the Owners of each such Unit.

4. Special Assessments. In addition to the annual assessments or charges for the purposes described in paragraph 2 of this Article and subject to the approval by the affirmative vote of sixty percent (60%) of all the Members who are present and voting in person or by proxy, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, and estimated repairs or replacements of any capital improvements, including the necessary fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate. No such special assessments however, shall be authorized without a meeting of the Members called for this purpose, by no less than ten (10) nor more than forty (40) days notice in writing to each Member stating the time, purpose and place of said meeting. Any such special Assessment shall be due and payable at the time and in the manner as approved. The Board of Directors may post a list of Members who are delinquent in the payment of any assessment or other fees which may be due the Association, including any installment thereof which becomes delinquent, in any prominent location within the Properties.

5. Reserves for Replacement. The Association shall, at all times, include in the annual assessments levied pursuant to Article VII hereof adequate sums for the establishment and maintenance of a reserve fund for replacements of the Common Areas, painting the exterior of any

improvements on the Common Areas and of the exterior surfaces of the wall and/or screen fence or wall of each Unit (base to top) exposed to view from, or fronts upon the front property line of each Unit and the repair and replacement of any paved areas on the Common Properties. The amount of such annual assessment applicable to the reserve fund for replacements shall be funded by regular monthly payments from the Unit Owners. The Association shall set the reserve funds on its books and records in a manner whereby no part thereof may be used by the Association or any Unit Owner for operating expenses. Funds from said reserves shall be disbursed by the Association only for the purpose of defraying the cost of replacements of the Common Areas painting the exterior of any improvements of the Common Areas and of the exterior surfaces of the all and/or screen fence or wall of each Unit (base to top) exposed to view from, or fronts upon the front property line of each Unit and the repair or replacement of any paved areas on the Common Areas. The Association shall render periodic reports as to the status of such reserve fund for replacements. The proportional interest of any Member in any such reserve fund for replacements shall be considered an appurtenance of his Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Unit to which it appertains and shall be deemed to be transferred with such Unit.

6. Uniform Rate of Fees or Charges. Both regular and special fees or charges may be fixed by the Board of Directors of the Association at a non-uniform rate for all Units.

7. Late Charge. If an assessment or special assessment is not paid when due, the Association may consider, determine and assert that a default in one month's payment constitutes a default for eleven additional months' payments, and assess the total thereof against any such Unit Owner and/or the Association may exact a reasonable Late Charge for each dollar not paid per month

or part thereof until paid, and any such total default sum and/or any such Late Charge shall become a lien on a defaulting Unit as any other assessment until paid. Default sums and/or Late Charges, when collected, shall be credited to the Common Areas fund.

8. Notice. The mortgagee under each townhouse Unit will be given written notice by the Association if the owner is in default of the payment of any dues or assessments imposed by the Association, or is in default with respect to any other obligation imposed by the Association, and the mortgagee will receive written notification from the Association of any default which is not cured within thirty (30) days.

9. Foreclosure of Lien. If any assessment made pursuant to the provisions hereof by the Association remains unpaid for thirty (30) days after the date upon which it is due, it may be foreclosed by suit by the Association in a like manner as a mortgage of real property, and Unit Owner shall be required to pay reasonable rental therefor. The Association shall have the power to bid at the foreclosure sale and to acquire and hold, lease, mortgage and convey any property acquired as a result of a successful bid. Suit to recover money charged for unpaid Common Areas assessments may be maintained without foreclosing or waiving the lien securing the same.

10. Expenses and Attorney's Fees. In the event that the Association shall bring any suit or action to enforce any provision contained herein or in the Rules and Regulations of the Association or the Architectural and Environmental Control Committee or to collect any money due to it thereunder or to foreclose a lien, the defendant in such suit or action shall pay to the Association all costs and expenses which the Association may incur in connection with such suit or action, including a foreclosure title report, and such amount as the court may determine to be reasonable

attorneys' fees therein, including attorneys' fees incurred in connection with any appeal from a decision of the trial court or an intermediate appellate court. The Association shall be entitled to assess and collect any and all costs incurred incidental to the collection process even though no formal action or suit is commenced.

11. Exempt Property. The following property subject to this Declaration and dedication shall be exempted from the fees, assessments, charges, and liens created herein;

(a) All property dedicated to, and accepted by any municipality or public utility for public use and purpose.

(b) All Common Areas and facilities.

ARTICLE VIII

INSURANCE

1. Insurance to be Obtained and Maintained Association. The Board of Directors of the Association shall obtain and maintain to the extent reasonably available, at least the following:

(a) Public liability insurance, in such amounts and in such terms as may be considered appropriate by the Board of Directors, including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile, liability for property of others, and any and all other liability incident to the ownership and/or uses of the Common Area and facilities, respectively; such policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or the owners; and

(b) Workmen's Compensation Insurance to the extent necessary to comply with any applicable law; and

(c) A "Legal Expense Indemnity Endorsement", or its equivalent affording protection for the officers and directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or director shall have been made a party by reason of his or her services as such; and

(d) Fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees, or volunteers responsible for handling funds collected and held for the benefit of the owners naming the Association as insured in an amount equal to no less than one and one-half (1 1/2) times the Association's annual operating expenses and reserves; and

(e) Such other policies of insurance, including blanket policies of insurance for townhouse Units as authorized by applicable Kansas law and by the Board of Directors of the Association.

2. Insurance to be Obtained and Maintained by Association and/or Townhouse Unit Owners. The Owner of any lot and townhouse Unit shall obtain and maintain casualty insurance, insuring all improvements owned by the Owner against loss by fire, lightning, windstorm or other casualty and extended coverage in an amount equal to a full replacement value (i.e., one hundred percent (100%) of replacements, costs exclusive of the land, foundation and excavation), respectively. All premiums for such insurance shall be paid by each Owner. Such insurance policies shall be in a form acceptable to the Board of Directors of the Association or its manager, and shall include a loss payable clause in favor of Westchester Homes Association, as insurance trustee or its

designated nominee, for the benefit of each Owner and their mortgagees, as their interest may appear, or jointly, to the mortgagee. In the event of loss, each Owner shall give notice to the Board of Directors of the Association or its manager, and the Board of Directors of the Association or its manager shall be authorized to make proof of loss if the same is not promptly made by each Owner. All insurance companies are authorized to make payments for such loss directly to Westchester Homes Association as insurance trustee, or its designated nominee for each owner and their mortgagee as their interests may appear. The Association, as insurance trustee, or its designated nominee, shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds nor for the form or content of the policies. The sole duty of the Association shall be to receive such proceeds as are paid, and hold the same in trust for the purposes stated herein for the benefit of the townhouse Unit owners and their respective mortgagees as their interests may appear. No mortgagee shall have any right to determine as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of any mortgage debt any insurance proceeds nor to assert any right or claim to any portion of the insurance proceeds, unless it be the excess of insurance payments over the replacement costs of the damaged unit and other portions of the Unit owner's property, and then only after the same is fully repaired and restored. In the event that there are proceeds remaining after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying such reconstruction or repair costs or in the event it is determined pursuant hereto that the damage for which the insurance proceeds are paid shall not be reconstructed or repaired, such proceeds shall be distributed to the respective owners and their

respective mortgagees as their interests may appear. If there are any such casualty loss proceeds which relate solely to the common areas remaining after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying such reconstruction or repair costs, then in such event, all of such proceeds shall be paid over to, or retained by the Association. For purposes of administering all provisions of the Declaration relating to insurance, the Association acting by and through its Board of Directors, is irrevocably appointed agent and attorney-in-fact for each Unit Owner and for each mortgagee, holder of deed of trust, or other lien upon a townhouse Unit. All damage to townhouse Units and improvements located upon real estate owned by the Association shall be repaired, reconstructed, and rebuilt from the proceeds of insurance collected by the Insurance Trustee, or from collection of assessments against owners on account of such casualty not covered by insurance. Such reconstruction and repair is mandatory unless an amendment is made to this Declaration with the consent of ninety percent (90%) or more of all memberships and their respective first mortgagees. If the cost of replacement, reconstruction or repair of an individual townhouse unit shall exceed the amount of insurance proceeds received by the insurance trustee, such excess shall be a special assessment against said lot and townhouse Unit to be paid by the Owner of said lot and townhouse Unit to the Association as insurance trustee, or its designated nominee, to be added to the funds received from said insurance proceeds, and the same shall be disbursed for replacement, reconstruction or repair of the Unit. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and restoration.

The Owner of any lot and townhouse Unit may obtain additional insurance at his expense, including liability insurance to cover accidents or damage to persons or property occurring within his own individual townhouse Unit. Each individual townhouse Unit Owner may purchase insurance upon his own personal property and any additional improvements located, within his

individual townhouse Unit. On and after July 1, 1975, the effective date of the TOWNHOUSE OWNERSHIP ACT OF KANSAS, where and where by the Association is authorized to purchase one or more blanket policies of casualty insurance, naming the Association as insured for the benefit of every owner and mortgagee, the Board of Directors shall purchase and maintain such insurance if so available for such purpose. In such event, except for payment of premiums, renewal or sufficiency and content of insurance policies of casualty insurance and the rights, obligations, procedures and requirements heretofore set forth in connection therewith shall nevertheless apply, and such insurance premiums shall be common expenses to be paid and handled by the Association as set forth hereinbefore. Such policy or policies of blanket insurance shall, however, in any event provide coverage for each townhouse Unit upon such terms and conditions as the Board of Directors of the Association may deem appropriated, provided however, that in any event, the coverage shall be not less than the coverage required by this Declaration applicable to individual policies of casualty insurance, and provided further, provisions for such blanket insurance shall be without prejudice to the right of each townhouse Unit owner to insure his own townhouse Unit under a separate policy meeting the requirements hereof, and without being charged additionally any share of the common insurance premium expense. In the event there are in existence both blanket as well as individual or homeowners policies of casualty, insurance, and if the damage for which the casualty loss proceeds are paid was limited solely to Units insured therefor under said individual or homeowners policies, then in such event, all of the remaining proceeds after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying such reconstruction or repair costs, or in the event it is determined pursuant hereto that the damage for which the insurance proceeds are paid shall not be reconstructed or repaired, such proceeds shall be paid over to the Unit owners thereof and their respective first mortgagees as their interests may appear;

however, if the damage for which the casualty loss proceeds are paid encompassed both the common areas and one or more Units, then all of such remaining proceeds shall be paid over to the Association and jointly to the Unit owners thereof and their respective first mortgagees as their interests may appear pursuant to such fair and reasonable formula governing the proration thereof as the Board of Directors of the Association shall determine in its sole discretion, which determination shall be final and binding on all of the aforesaid parties; and if, under the aforesaid circumstances, any such casualty causes no damage to any of the Unit owners' properties solely individually insured, then in any such event, all or any such remaining proceeds shall be paid over to and/or retained by the Association. In the event that there are no homeowners or individual casualty insurance policies, but only blanket policies of casualty insurance in existence at the time of any damage, then in such event, all of the casualty loss proceeds remaining after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying reconstruction or repair costs thereof shall be paid over, or retained by the Association. Annually, the Association may require the evidence of insurance coverage, with all appropriate endorsements and provisions as specified herein from each owner, or shall furnish each townhouse Unit owner a memorandum of insurance coverage approved by the Kansas Commissioner of Insurance setting forth the essential coverages of any blanket policy.

ARTICLE IX

ARCHITECTURAL AND ENVIRONMENTAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon, ~~the properties nor shall any exterior addition to or change~~ or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same and/or any other proposed form of change including, without limitations any other information

specified by the Architectural and Environmental Control Committee shall have been submitted to, and approved in writing as to harmony of external design and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Board of Directors of the Association, or by the aforesaid committee composed of three (3) or more representatives appointed by the Board of Directors.

Subject to the same limitations as hereinabove provided for, it shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, plant, remove or construct any lighting, shades, screens, awnings, patio covers, decorations, fences, hedges, landscaping features, wall, aeriels, antennas, radio or television broadcasting or receiving devices, slabs, sidewalks, curbs, gutters, patios, balconies, porches, driveways, walls or to make any change or otherwise alter (including any alteration in color) in any manner whatsoever the exterior of any improvements constructed upon any Unit or upon any of the Common Areas or to combine or otherwise join two or more townhouse Units, or to partition the same after combination or to remove or alter any windows or exterior doors of any townhouse Unit, or to make any change or alteration within any townhouse Unit which will alter the structural integrity of the building or otherwise affect the property, interest or welfare of any other Unit Owner, materially increase the cost of operating or insuring any of the Common Areas or impair any easement, until the complete plans and specifications, showing the location, nature, shape, height, material color, type of construction and/or any other proposed form of change (including, without limitation, any other information specified by the Architectural and Environmental Control Committee) shall have been submitted to and approved in writing as to safety, harmony of external design, color and location in relation to surrounding structures and topography and conformity with the design concept for the community by the Architectural and Environmental Control Committee.

In the event the Directors, or their designated committee, fail to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

Construction or alterations in accordance with plans and specifications approved by the Architectural and Environmental Control Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved by the Committee (whether by affirmative action or by forbearance from action), and shall be substantially completed within twelve (12) months following the date of commencement, or within such other period as the Committee shall specify in its approval, or in the event construction is not commenced within the period aforesaid, compliance with the provisions of this Article shall again be required. There shall be no deviation from the plans and specifications approved by the Committee without the prior consent in writing of the Committee. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance.

Upon the completion of any construction or alterations or other improvements or structure in accordance with plans and specifications approved by the Architectural and Environmental Control Committee in accordance with the provisions of this Article, the Committee shall, at the request of the owner thereof, issue a certificate of compliance which shall be prima facie evidence that such construction, alteration, or other improvements referenced in such certificate have been approved by the Architectural and Environmental Control Committee and constructed or installed in full compliance with the provisions of this Article and with such other provisions and requirements of this Declaration as may be applicable.

The Architectural and Environmental Control Committee may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval, and may publish and/or record such statements of policy, standards, guidelines, and/or establish such criteria relative to architectural styles or details, colors, set-backs, materials or other matters relative to architectural control and the protection of the environment, as it may consider necessary or appropriate. No such rules regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this Article or any other provision or requirement of law or of this Declaration. The Architectural and Environmental Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this Article. The decisions of the Architectural and Environmental Control Committee shall be final except that any member who is aggrieved by an action or forbearance from action by the Committee (or by any policy, standards or guidelines established by the Committee) may appeal the decision of the Architectural and Environmental Control Committee to the Board of Directors, and, upon the request of such member, shall be entitled to a hearing before the Board of Directors of the Association.

ARTICLE X

RESTRICTIONS

The Use of Units and Common Areas is restricted as follows:

1. Use of Units. No Unit or part of any Unit shall be used for a purpose other than a private residence; provided, however, that part of a Unit, in conjunction with it's use as a single family residence and purely as an ancillary use with no regular customers or inviting of customers to the Unit, or signs or advertising of any type, on or off the Unit, also may be used as an office by the Occupant with the prior written consent of the Association.

2. Construction or Alteration of Improvements. No improvements or structure of any sort may be constructed on any land subject to this Declaration or any land added thereto, without the prior approval of the Association in writing, nor may the exterior of the portion of any Unit be altered, changed or remodeled without like prior written consent of the Architectural and Environmental Control Committee as previously discussed in Article IX hereof, nor any painting or decorating of the exterior be done without like prior written approval of the aforesaid committee.

3. Structures. No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, playhouse, shed or other buildings shall be erected, used or maintained on any Unit at any time.

4. Obstructions. There shall be no obstructions of any portions of the Common Areas nor any storage in the Common Areas without prior written consent of Declarant or the Management Company. No clothes; laundry or other articles shall be hung or exposed in any portion of the Common Areas or on or about the exteriors of the Units.

5. Signs. Except as set forth under paragraph 1 of this Article hereinbefore, no sign shall be hung, or displayed either ton the inside or the outside of any Unit or otherwise or so as to be seen from the exterior, and no awnings, canopy, shutter or radio or television antenna, no satellite dish, disc receiving devise, shall be affixed to or placed upon an exterior wall or roof without the prior written consent of the Association, one "for sale" sign at any one time which must be furnished by the Association and may be displayed by or on behalf of an owner solely in the ground area in front of his Unit until sold.

6. Animals. No animals, livestock or poultry of any kind shall be raised or kept on any building site in the Project other than household pets, which shall be limited to two (2) per household, without written consent of Association. All pets shall be leashed when outside of the

home and patio area but not to fence. No such pet will be kept, bred or maintained for commercial purposes.

7. Nuisance. No noxious or offensive trade or activity shall be carried on upon or within any Unit nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Members. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Unit or upon the exterior of any other improvements.

8. Movable Units. No vehicle shall be parked on streets or driveways so as to obstruct ingress and egress by Owners of Units, their families, guests and invitees except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible. For a period not to exceed forty-eight (48) hours, family, guests and invitees of Owners of Units may park their vehicles in the guest parking areas provided as part of the Common Areas, Guest parking areas are not intended for use by the owners of Units for parking or storing boats, trailers, camping Units, or any personal vehicles and the Association may insure the proper use of said areas in such legal manner as it deems necessary.

9. Interference with Maintenance by Association. No Owner or resident of any portion of the properties shall have, claim or exercise any right to maintain, alter the appearance or improve any areas or surfaces of the properties maintained by the Association under the general maintenance provisions of this Declaration.

ARTICLE XI

EASEMENTS AND COMMON AREAS

On the plat of Westchester referred to above are shown Common Areas. The Ownership of the underlying fee in the common Areas shall be vested in the Association subject to the provisions hereof. The Association shall designate the specific Common Areas used from time to time, and shall promulgate rules and regulations for the use of the Common Areas.

Every owner shall have, and is hereby granted a right of ingress and egress and an easement of enjoyment in and to the Common Areas, but only for the designated use, and each easement shall be appurtenant and shall pass with the title to each Unit, subject to this Declaration. Said right of ingress and egress and easement of enjoyment shall exist regardless of the ownership of the underlying fee of such Common Areas. The right to use and enjoy the Common Areas shall be subject to such rules and regulations, as may be promulgated by the Association from time to time, and in no event shall the Common Areas be used for any purpose other than that designated by the Association without the written consent of the Association.

Should any part of a Common Areas encroach upon any part of a Unit, or should any part of a Unit encroach upon any Common Areas or upon any other Unit, perpetual easements for the maintenance of such encroachment and for the use of the space required thereby are hereby established and shall exist for the benefit of the Owner of the Unit or the Common Areas, as the case may be.

The property subject to this Declaration shall be subject to a perpetual easement in gross to ~~the Association~~, its successors and assigns, for ingress and egress, to perform its obligations and duties as required by this Declaration or amendments thereto. Should it be necessary to enter a Unit

to repair a Common Areas, employees, agents and workmen shall be entitled to entrance by exhibiting to the Owner(s) of the Unit an order from the Association,

The Association shall have, and does hereby reserve the right, to locate, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, sanitary and storm sewers, gas and water mains and liens, electrical and telephone lines, cable televisions, master television antenna system, fire warning systems and other utilities, and conduits for any and all pumps, and to give or grant right of use of easements therefor, over, under, through and upon any part of the land subject to this Declaration, except the portions thereof upon which Buildings have been erected.

Some Units to be constructed in Westchester may have one wall, (some will have two such walls), in common with an adjoining Unit, which Common Walls will be built on the dividing line between Units. Within the Common Walls between certain of the Units there are or will be installations of plumbing and heating and electricity pipes and conduits and fireplace flues. A party wall easement is hereby established over that part of any parcel on which any part of a Common Wall is situated, with the Association hereby being granted the right to maintain, restore and repair any such wall provided, however, that the cost of maintenance, restoration or repair of any Common Wall necessitated by the negligent or intentional act of the Owner of a parcel serviced by such wall shall be at the expense of such owner to the extent not covered by insurance.

1. General Rules. To the extent not inconsistent with this Article, all laws applicable to party walls and liability for property damage due to negligence or willful acts or omissions in the ~~state of Kansas~~ shall apply thereto. No owner shall cut through or make penetration through a party wall for any purpose whatsoever.

2. Party Fence. Each fence which is built and placed on the dividing lines between lots and townhouse Units shall constitute a party fence, and the general rules of law regarding party walls or fences and liability for property damage due to negligence or willful acts or omissions shall apply to such party fences. No owner of any townhouse Unit shall cut through or make penetration through a party fence for any purpose whatsoever.

3. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of the party wall or party fence shall be shared by the owners who make use of the wall or fence, except such repair and maintenance required to be made by the Association as set forth hereinbefore.

4. Destruction by Fire or Other Casualty. If a party wall or fence is damaged or destroyed by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, said wall or fence shall be repaired or replaced by the owners thereof and the cost of such repairs or replacement shall be borne equally without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

5. Weatherproofing. Notwithstanding any other provisions of this Article, to the extent that such damage is not covered and paid for by the insurance provided for herein, an owner, who by his negligent or willful act causes or permits any party wall or portion thereof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6. Right to Contributions. The right of any owner to contributions from any other owner under this Article shall be appurtenant to the lot and townhouse Unit and shall pass to such owner's successors in title.

7. Arbitration. In the event of any dispute arising concerning any party wall or party fence, the same shall be determined by compulsory arbitration. Each party shall choose one

arbitrator and such arbitrators shall choose one additional arbitrator and the decision rendered by a majority in number of all the arbitrators shall be final and binding on all said parties. If any party refuses to appoint an arbitrator within ten (10) days after written request thereof, the Board of Directors of the Association shall have the authority to select an arbitrator for the refusing party.

The following additional easements are also created and established:

(a) For the purpose of draining snow and rain water from the roof of any Unit through gutters and downspouts and drains located on other Units.

(b) For the purpose of supporting a roof of any of the Units which attaches to the roof of any other Unit.

(c) For the purpose of keeping, maintaining, restoring and repairing in its original location any line, conduit, facility or meter used for the purpose of providing sewage, electrical power, gas and water, or telephone service and cable television to any improvements located on the Property subject to this Declaration.

(d) For all the purpose of ground surface drainage by swales and/or indentations on the surface.

All easements and rights herein established shall run with the land, inure to the benefit of, and be binding upon the Association, its successors and assigns, and any Unit Owner, purchaser, mortgagee, or other person having an interest in any Unit, whether or not such easements are mentioned or described in any deed or conveyance, and the successors, heirs and assigns of each.

ARTICLE XII

ENFORCEMENT

The Association, its successors and assigns, and also the Owner or the Owners of any of the Property hereby restricted, shall have the right to sue for, and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of the covenants, conditions and restrictions set forth above, in addition to any ordinary, legal, action for damages, and failure of the Association, its successors and assigns, or any Owner or Owners of the Property in Westchester Homes Association, to enforce any of the covenants , conditions and restrictions set forth herein at the time of its violation shall, in no event, be deemed to be a waiver of the right to do so thereafter.

ARTICLE XIII

RELEASE OR MODIFICATION

The covenants, restrictions and provisions of this instrument shall be deemed covenants running with and binding the land subject to the Declaration, and shall remain in full force and effect for a term of thirty (30) years from the date this Declaration is recorded, at which time said covenants, restrictions and provisions shall automatically be extended for successive periods of ten (10) years each, unless such covenants, restrictions and provisions are amended, modified, changed or canceled, in whole or in part, by a written agreement signed by not less than sixty percent (60%) of the Owners respectively of all memberships, then subject to this Declaration. Any agreement modifying, changing, or canceling these restrictions shall become effective upon the date of its recording in the Office of the Register of Deeds of Johnson County, Kansas, and shall not be applicable to existing buildings in the Project except as herein set forth and so authorized.

ARTICLE XIV

AMENDMENTS

Except as otherwise provided in Article XIII and paragraph 1 of this Article XIV, the covenants, conditions, provisions and restrictions of this Declaration may be abolished or changed, at any time, in whole or in part only with the consent of sixty percent (60%) of all Class B memberships, evidenced by a signed instrument.

ARTICLE XV

GENERAL PROVISIONS

1. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the annual assessment funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas and all recreational and other common facilities, or from any wire, pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas and all recreational and other common facilities. No diminution or abatement of assessments, as hereinelsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making or repairs or improvements to the Common Areas and all recreational and other common facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any law or ordinance or with the order or directions of any municipal or other governmental authority.

2. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfers any Unit, any deed purporting to effect such transfer shall contain a provision incorporating by reference the covenants, conditions and restrictions set forth in this Declaration; but failure to

include such a provision in any such deed shall not affect the validity, priority or enforceability of the covenants, conditions and restrictions set forth in this Declaration or against such sold or otherwise transferred Unit.

3. Consents. Any other provision of this Declaration to the contrary notwithstanding, the Association shall not, without the prior written consent of all first mortgagees of record:

(a) Abandon or terminate the Declaration; or
(b) Modify or amend any of the substantive provisions of the Declaration; or
(c) Change the method of determining the obligations, assessments or other charges which may be levied against any Unit of the Owner thereof as provided in this Declaration;
or

(d) By act or omission encumber, mortgage, partition, subdivide, sell, transfer abandon or otherwise dispose of any of the Common Properties and all recreational and other common facilities which are owned, directly, or indirectly by the Association; or

(e) By act or omission change, waiver or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Units, the exterior maintenance of Units, the maintenance of party walls or common fences and driveways, or the upkeep in laws and plantings in the Areas.

4. Notices. All notices required to be given hereunder shall be deemed to have been properly sent when deposited with the United States Postal Service, ordinary mail, postage prepaid, addressed to the Owner at the street address assigned to his Unit by the governing body of the City of Lenexa, Kansas,

6. Separability. Invalidation of any provision or restriction set forth herein or any part thereof by an order, judgment or decree of any court of law or equity, or otherwise, shall not

invalidate or affect any of the other restrictions or any part thereof as set forth herein, but they shall remain, and continue in full force and effect.

7. Captions. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration.

IN WITNESS WHEREOF, Association has caused this instrument to be executed the day and year first above written.

WESTCHESTER HOMES ASSOCIATION

By: William R. Buckner
President WILLIAM R. BUCKNER

ACKNOWLEDGMENT

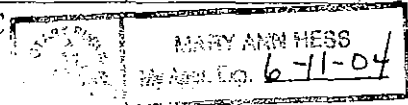
STATE OF KANSAS)
 Miami) ss.
COUNTY OF ~~JOHNSON~~)

On this 25th day of June, 2002, before me, the undersigned, a Notary Public in and for the county and state aforesaid, personally appeared: William R. Buckner, President of Westchester Homes Association personally known to be the same person who executed the within and foregoing instrument of writing and acknowledged to me that the same was executed as a free and voluntary act and deed for the uses and purposes therein set forth.

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

Mary Ann Hess

NOTARY PUBLIC



My commission expires 6-11-04

EXHIBIT A

Legal Descriptions for Westchester Courts Subdivisions

Tracts A, B, C, D, E and Common Area, CERTIFICATE OF SURVEY OF LOT 1, WESTCHESTER COURTS, FIRST PLAT and CERTIFICATE OF SURVEY OF LOT 10, WESTCHESTER COURTS, SECOND PLAT, filed in the Register of Deeds in Volume 2434, Page 533, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C, D and Common Area, CERTIFICATE OF SURVEY OF LOT 2, WESTCHESTER COURTS, FIRST PLAT, filed in the Register of Deeds in Volume 2158, Page 163, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C and Common Area, CERTIFICATE OF SURVEY OF LOT 3, WESTCHESTER COURTS, FIRST PLAT, filed in the Register of Deeds in Volume 2158, Page 164, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C and Common Area, CERTIFICATE OF SURVEY OF LOT 4, WESTCHESTER COURTS, FIRST PLAT, filed in the Register of Deeds in Volume 2158, Page 165, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C, D and Common Area, CERTIFICATE OF SURVEY OF LOT 5, WESTCHESTER COURTS, FIRST PLAT, filed in the Register of Deeds in Volume 2158, Page 166, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B and Common Area, CERTIFICATE OF SURVEY OF LOT 8, WESTCHESTER COURTS, 1ST PLAT, filed in the Register of Deeds in Volume 2330, Page 491, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C, D, E and Common Area, CERTIFICATE OF SURVEY OF LOTS 11 AND 12, WESTCHESTER COURTS, SECOND PLAT, filed in the Register of Deeds in Volume 2629, Page 706, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C and Common Area, CERTIFICATE OF SURVEY OF LOT 14, WESTCHESTER COURTS, SECOND PLAT, filed in the Register of Deeds in Volume 2721, Page 242, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C, D and Common Area, CERTIFICATE OF SURVEY OF LOT 15, WESTCHESTER COURTS, THIRD PLAT, filed in the Register of Deeds in Volume 2452, Page 243, a subdivision in the City of Lenexa, Johnson County, Kansas.

Legal Descriptions for Westchester Courts Subdivisions
Continued

Tracts A, B, C, D and Common Area, CERTIFICATE OF SURVEY OF LOT 16, WESTCHESTER COURTS, THIRD PLAT, filed in the Register of Deeds in Volume 2705, Page 92, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C, D, E and Common Area, CERTIFICATE OF SURVEY OF LOTS 17 AND 18, WESTCHESTER COURTS, THIRD PLAT, filed in the Register of Deeds in Volume 2666, Page 895, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C and Common Area, Lot 20, WESTCHESTER COURTS, THIRD PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

Lot 21, WESTCHESTER COURTS, THIRD PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C, D and Common Area, CERTIFICATE OF SURVEY OF LOT 22, WESTCHESTER COURTS, THIRD PLAT, filed in the Register of Deeds in Volume 2705, Page 91, a subdivision in the City of Lenexa, Johnson County, Kansas.

Lot 23, WESTCHESTER COURTS, THIRD PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

Lots 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34, WESTCHESTER COURTS, FOURTH PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

Lots 35, 36, 37, 38, 40, 41, 42, 43, 44, 45 and 46, WESTCHESTER COURTS, FOURTH PLAT, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B and Common Area, CERTIFICATE OF SURVEY OF LOT 39, WESTCHESTER COURTS, FOURTH PLAT, filed in the Register of Deeds in Volume 2999, Page 20, a subdivision in the City of Lenexa, Johnson County, Kansas.

Tracts A, B, C, D, E, F and Common Area, CERTIFICATE OF SURVEY OF WESTCHESTER COURTS, FIRST PLAT AND SECOND PLAT, filed in the Register of Deeds in Volume 4597, Page 275, a subdivision in the City of Lenexa, Johnson County, Kansas.