

Qrc.
TITLE CO., INC.
764-6238
P. O. BOX 2073
BLAINE, KS 66061

1491949 ✓

STATE OF KANSAS
COUNTY OF JOHNSON } ss
FILED FOR RECORD

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4900
RUBIE M. SCOTT
REGISTER OF DEEDS
BY _____ DEP:

DECLARATION OF COVENANTS
CONDITIONS, RESTRICTIONS AND
DEDICATION OF EASEMENTS

THIS DECLARATION is made and entered into this 4th day of May, 1984, by and between LESTER T. COOK and CATHERINE I. COOK, husband and wife, the Owner, and HOUSE AND HOME CONSTRUCTION, INC., A Kansas Corporation authorized to do business in the State of Kansas, the Developer, said parties being hereinafter sometimes referred to jointly or severally as the Declarant, and relates to the following described land, to-wit:

The south 1/2 of the north 1/2 of the SE 1/4 of the SW 1/4 except the South 150 feet of the East 312 feet thereof in Section 23, Township 12, Range 24, City of Shawnee, Johnson County, Kansas, more particularly described as follows:
Beginning at a point on the East line of said SE 1/4 of SW 1/4, said point being S 0 degrees 12 min , 52 seconds E 331.36 feet from the Northeast corner thereof, thence S 0 degrees, 12 min , 52 sec E 181.29 feet thence N 89 degrees, 52 min , 38 sec W 312 feet thence S 0 degrees, 02 min , 52 sec , 150 feet, thence N 89 degrees, 52 min , 38 sec W, 1010.20 feet, thence N 0 degrees, 07 min , 55 sec E along the West line of said SE 1/4 of SW 1/4 330.01 feet, thence S 89 degrees, 55 min , 58 sec E, 1321.16 along the South line of CEDAR VALLEY SUBDIVISION to the point of beginning, containing 8.96 acres. now known as Situs Place

being part and parcel of the plat of SITUS PLACE heretofore recorded on the 4th day of May, 1984, as Instrument No. 1467788 in Book 56 at Page 1, containing 8.96 acres, more or less, of unplatted land, hereinafter sometimes referred to as the Property.

PURPOSE

The purpose of this Declaration is to establish a beneficial and highly desirous mechanism whereby SITUS PLACE may become an outstanding and prestigious residential area. ~~This 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 SITUS PLACE and such provisions must include an enforceable means of obtaining funds for the carrying out of these advantageous programs.

THE DECLARATION

Declarant hereby declares that all of the land described above and platted as SITUS PLACE 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 upon all parties having or acquiring any right, title or interest in and to 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

When used herein the following terms shall have the meaning set forth:

1. "Association" shall mean the Situs Place Homes Association, a not-for-profit corporation formed 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 and of carrying out the various duties and obligations otherwise provided for herein and

to exercise the powers provided for herein and under the laws of the State of Kansas.

2. "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.

3. "Building" shall mean a structure composed of Units.

4. "Unit" shall mean the portion of a Building which is designed and used exclusively for single family residential purposes except as herein provided.

5. "Common Areas and Facilities" shall mean all 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 SITUS PLACE. 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, Johnson County, Kansas, and/or as set forth on the recorded plat.
- b. All community building(s), tennis courts(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 private drives, streets and open parking areas 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 antennae, incinerators, 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 tennis court(s), recreational facilities, building(s), structure(s), or other facilities of the Association.

6. "Owner" shall mean and refer to the record owner, whether one or more, of a fee simple title to any Unit which is a part of the project, including contract sellers, but excluding those having such an interest merely as security for an obligation.

7. "Tenant" shall mean the individual(s) renting a Unit, subject to the provisions of this Declaration from an Owner.

8. "Project" shall mean SITUS PLACE, a subdivision in the City of Shawnee, Johnson County, Kansas as more fully described above as it may ultimately be (if enlarged from time to time) fully developed.

9. "Mortgagee" 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 townhouse unit.

10. "Declarant" shall mean and refer to HOUSE AND HOME CONSTRUCTION, INC. and LESTER T. COOK and CATHERINE I. COOK, husband and wife.

11. "SITUS PLACE" shall mean and refer to the Project and the terms may be used interchangeably herein.

ARTICLE II

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 Class A membership.

2. Types of Membership in the Association. The Association shall have two classes of voting memberships:

a. Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, all such persons shall be members. The vote for such Unit shall be exercised as they determine, but in no event shall more than one vote be cast with respect of any Unit.

b. Class B. Class B member(s) shall be the Declarant (as defined in the Declaration), and shall be entitled to three (3) votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

1. when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

2. on January 1, 1986.

ARTICLE III

COMMON AREAS AND FACILITIES

RIGHTS OF OWNERS

AND THE ASSOCIATION

On the plat of SITUS PLACE referred to above are certain tracts designated "Common Areas". The Ownership of the underlying fee in the Common Areas shall be vested in the Association subject to the provision hereof.

1. Enjoyment. Subject to paragraph 2 of this Article, each

Owner or his Tenant shall have a right and easement of enjoyment in and to the Common Areas and facilities, and such easements shall be appurtenant to and shall pass with the title to each lot and townhouse unit. The Class A 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.

Should any part of a Common Area 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 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.

Declarant so long as Class B membership exists and the Association shall hereafter have, and do 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 lines, electrical and telephone lines, cable television, master television antenna systems, etc.

warning systems and other utilities, and conduits for any and all pumps and to give or grant right of use of easements therefore, over, under, through and upon any part of the land subject to this Declaration, except the portions thereof upon which Buildings have been erected.

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 tennis court(s) and boat-camper recreational vehicle storage area and 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 of 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 two-thirds (2/3) of each class 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 as provided for herein.

- 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, the Declarant 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 Board of Directors of the Association to fix penalties for the violation of said rules and regulations including suspension of use of Common Areas not to exceed sixty (60) days.
- g. The right of the Association to charge a fair and reasonable fee per year for each dog and for each cat belonging to an Owner of a townhouse unit.
- 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, unless approved by two-thirds (2/3) of the members of each class.

1. 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.

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.

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 the Project becomes clogged, in need of 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 therefore.

- b. 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.
- c. Depreciation shall not be included as a cost except in the case of tangible items that are used in the Common Areas.
- d. All costs of maintaining on-site security exclusive

of individual townhouse units. Security shall mean the operation and maintenance of security facilities such as burglar alarms, fire alarms, lightning rods and employment of security personnel, and such other items of expense (following consultation with the then owners) as may be first approved by Declarant and thereafter incurred 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.

- e. Contingency reserves as determined from time to time by the Board of Directors of the Association.
- f. 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 on July 1, 1975.
- h. Fee of the Management Company as set forth in Article V 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, Bylaws and by this Declaration.

ARTICLE IV

MAINTENANCE

Because of the fact that Units, although separately owned or suitable for separate ownership, comprise a Building, Declarant does hereby set forth herein certain stipulations which shall govern the ownership 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, including patio area(s) and/or decks adjoining and appurtenant to a Unit, 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. The maintenance of the exterior of any Building shall be the obligation of the Association and shall extend to (but not be limited to) the maintenance of all structural parts of all Buildings, including the maintenance of roofs, gutterings, eaves and/or items which are not actually in the interior of a Unit. Such maintenance shall include exterior painting of a Building, and replacement of roofing when, in the opinion of the Association, after consultation with the Owners of Units in such Buildings, it is deemed necessary. The Association may delegate the obligation of exterior maintenance to the Management Company.

3. Separate reserves shall be established by the Association for exterior painting of Units and for the replacement of roofing.

4. The maintenance and upkeep of the Common Areas shall be the responsibility of the Association and shall include, but not be limited to the following:

- a. Maintenance of exterior building surfaces, if any, maintenance of all green areas (lawns), flower gardens, shrubs, trees, plants, including replacement or changing when deemed appropriate by the Association, parking areas, driveways, removal of snow and trash, and maintenance and replacement of curbs, walkways, drainage and Common Areas lighting facilities and other parts and accessories in and to the Common Areas. In the event any common sewer, service and/or utility line running to or connected with any building in the Project becomes clogged, in need of 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 therefore.

5. Should any Owner fail to maintain his patio or fenced area as required herein, then the Association may, after the approval of two-thirds (2/3) of the Board of Directors, enter into such area and perform the required maintenance. The cost of such maintenance shall be added to and made a part of the assessment to which the Unit is subject.

ARTICLE VI

MANAGEMENT COMPANY

The Association may employ, by contract, a Management Company^{U.}

in which Declarant may have an interest, 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 operate and maintain 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.

The Developer, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association such Association assessments as are fixed by the Association's Board of Directors and assessed to the Members as hereinafter provided. All sums assessed by the Association but unpaid, together with such interest thereon as is hereinafter provided, shall be a charge on the Lots and shall be a continuing lien upon the Lots owned by such Member against which each such assessment is made. Each such assessment, together with

interest thereon and cost of collection thereof, including reasonable attorneys' fees and Court costs, as hereinafter provided, shall be a personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due regardless of any alleged reason, assertion or defense believed, advanced or made by any Owner, timely payments of all assessments are agreed to and shall be made by such Owner.

2. Purpose of the Assessment. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners in the Properties as an entire community and, in particular, for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the appropriate portion of Common Properties and of the Lots situated upon the Properties, including without limiting the foregoing, the payment of taxes (if any), and insurance thereon and repair, replacement maintenance and additions thereto, and the cost of labor, equipment, materials, utilities, services, management and supervision thereof.

3. Assessments. The Association's Board of Directors shall, from time to time, but at least annually, fix and determine a budget representing the sum or sums necessary and adequate for the continued operation of the Association. The Board shall determine the total amount required, including the operational items such as insurance, repairs, replacements, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements and reserves approved by the Board. The total annual assessments shall be shared by all Lots on an equal basis. Each Lot shall commence paying its share of the Association assessments commencing with the day title to the Lot is conveyed by deed from the Developer to the first Owner thereof; provided, however, a

conveyance by the Developer to a related or affiliated entity shall not be deemed a conveyance to the first grantee.

4. Determination of Maximum Annual Assessment. Annual assessments or charges, except the assessment for each Unit Owners pro-rata share of any casualty insurance premium as hereinafter provided for, shall remain constant from January 1 through December 31 of each year and shall be subject to the following limitations thereon:

a. Until January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment shall be \$30.00 month per Lot.

b. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in an amount which is in conformity with the rise, of the Consumer Price Index (Published by the Department of Labor, Washington, D.C.) for the preceeding month of July except for the following items which shall be part of the annual assessment but not subject to the above limitations:

(1) The amount by which ad valorem real estate taxes, utility charges and casualty and other insurance premiums payable by the Association have increased over the amount payable for the same or similar items for the previous year; and,

(2) Increased costs and expenses resulting from the operation and maintenance of the common facilities and/or amenities of the project over similar costs for the preceeding year; and,

(3) Amounts required to fund any reserves for painting and roof repair for the Units.

c. From and after January 1 of the year immediately following conveyance of the first Unit to an Owner, the maximum

annual assessment may be increased above that established by the Consumer Price Index formula upon the affirmative vote of two-thirds (2/3) of the quorum of Members present at a meeting called in accordance with notice provisions hereof with the purpose of voting upon such increase.

d. The Board of Directors may affix the annual assessment at an amount not in excess of the maximum annual assessment and in setting the assessment shall give consideration to the fee of the management company, if any, as well as the mandatory separate annual reserve for anticipated major repairs or replacements. In the event there is an excess of money collected from any annual assessments, after excluding, the mandatory separate annual reserves accruing to provide the required funds for repair or replacement of roofs and painting of the exterior of Units and any other required reserves, such excess shall be taken into consideration in preparing the budget and annual assessment to be paid 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 procedures.

5. Special Assessments for Capital Improvement. In addition to the annual assessments authorized above, 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for such other purpose as the Board of Directors may consider appropriate. No such special assessment shall be authorized except upon the affirmative vote of two-thirds (2/3) of a quorum of Members present at a meeting called in accordance with the notice procedures contained herein for the purpose of approving

such special assessments. The Members shall also vote upon and approve the procedure for the payment of such special assessments.

6. Due Dates; Duties of the Board of Directors. All Assessments shall be payable monthly or quarterly in advance or on such other basis as is ordered by the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each Lot and shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Member. Upon the written request of a Member or his Mortgagee, the Board shall promptly furnish such Member or his Mortgagee with a written statement of the unpaid charges due from such Member.

7. Effect of Non-Payment of Assessment; The Personal Obligation of the Member; The Lien, Remedies of the Association. If an assessment is not paid on the date when due, as fixed by the Board of Directors, then such assessment, together with the balance, at the option of the Board, of the annual assessments established by the Board pursuant to Sections 3, 4 and 5 of this Article, shall become delinquent and shall, together with such interest thereon, late charges and the cost of collection thereof, including reasonable attorneys' fees and Court costs, as hereinafter provided, thereupon become a continuing lien on the Member's Lot which shall bind such property in the hands of the Member, his heirs, devisees, personal representatives and assigns. Such lien shall be prior to all other liens except: (a) tax or assessment liens on the Lot of the taxing subdivision of any governmental authority, including but not limited to, state, county and school district taxing agencies; and (b) all sums unpaid on any bona fide first mortgage of record encumbering the Home or Lot. The personal obligation of the Member who was the Owner of the Lot when the assessment fell due, to pay such assessment,

however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within ten (10) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the maximum permissible rate in the State of Kansas; a late charge of \$25.00 shall become due, and the Association may bring an action at law against the Owner or former Owner personally obligated to pay the same, or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and reasonable attorneys' fees to be fixed by the Court, together with the cost of the action and the aforesaid late charge.

8. Selling, Leasing and Gifts of Lots, Etc. No Member shall convey, mortgage, pledge, hypothecate, sell or lease his Unit unless and until all unpaid assessments assessed against such Unit shall have been paid as directed by the Board of Directors; such unpaid assessments, however, may be paid out of the proceeds from the sale of the Unit or by the Purchaser of such Unit. Any sale or lease of the Unit in violation of this Section shall be voidable at the election of the Board of Directors.

Upon the written request of the Owner or his Mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Owner which shall be conclusive evidence of the payment of amounts assessed prior to the date of the statement but unlisted thereon. A reasonable charge may be made by the Board for the issuance of such statements.

The provisions of this Section shall not apply to the acquisition of a Lot by a Mortgagee who shall acquire title to

such by foreclosure or by deed in lieu of foreclosure. (The lien and obligation created hereunder shall, however, be collectible as otherwise provided herein or by law, and shall be entitled to the priority set forth herein and under the law of the State of Kansas.) Such provisions shall, however, apply to any assessments which are assessed and become due after the acquisition of title by the Mortgagee and to any purchaser from such Mortgagee.

Whenever the term Lot is referred to in this Section, it shall include the Member's interest in the Association and the Member's interest in any property acquired by the Association. Any Member may convey or transfer his Lot by gift during his lifetime or devise the same by Will or pass the same by intestacy. The provisions of this Section shall not apply to Developer. This Section may not be amended without the prior written consent of Developer.

9. Subordination of Lien. The lien for assessments provided for in this Article shall be superior to all other liens, except tax liens, mortgage liens in favor of institutional mortgages or persons or entities deemed to be institutional mortgagees by the provisions of this Declaration, and mortgage liens in favor of Mortgagees under mortgages now existing or hereafter granted by the Developer, as Mortgagor.

ARTICLE VII

INSURANCE

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

- (a) Casualty insurance naming the Association as insured for the benefit of the owners in an amount equal to the full replacement value (i.e., one hundred percent (100%) of "replacement cost"

exclusive of land, foundation and excavation), respectively, of the improvements located upon real estate owned by the Association with an agreed amount endorsement, without deduction or allowance for depreciation (as determined annually by the Board of Directors with the assistance of the insurance company affording such coverage), such coverage to afford protection at least against the following:

- (1) Loss or damage by fire or other hazards covered by the standard extended coverage endorsement;
 - (2) Such other risks as shall customarily be covered with respect to property similar in construction, location and use, including but not limited to, cost of demolition, vandalism, malicious mischief, windstorm, water damage, machinery explosion or damage, and such other insurance as the Board of Directors may from time to time determine; and
- (b) 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

- (c) Workmen's Compensation Insurance to the extent necessary to comply with any applicable law; and
- (d) 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
- (e) 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
- (f) 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 replacement costs exclusive of the land, foundation and excavation), respectively, with an "agreed amount" endorsement without deduction or allowance for depreciation and the insurer

shall waive any "increase of hazard" provision of its policy and any "apportionment of loss" provision of its policy in the event there is any other insurance insuring the same risk. 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 the Association, as insurance trustee, or its designated nominee, for the benefit of each Owner and their Mortgagees as their interests may appear, or jointly, to the townhouse Unit Owner, the Association and the Mortgagee. In the event of loss, each Owner shall give notice to the Board of Directors and 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 the 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. In the event that there are proceeds remaining after paying all reasonable costs and expenses related to the administration of the insurance trust reconstruction or repair of the property involved, or in the event it is determined pursuant hereto that the damage for which the insurance proceeds are paid shall not be 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 paying 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. The Association, acting by its Board of Directors, or its duly authorized manager, shall have the authority to, and shall adjust all claims arising under all insurance policies, and shall have the authority to, and shall execute and deliver releases upon the payment of claims. Title to any unit is declared, and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact as herein provided. The proceeds of insurance collected on account of any casualty by the Association as insurance trustee, or its designated nominee, except as otherwise provided for herein, shall be disbursed only in payment of the costs of replacement, reconstruction or repair of the damaged improvements.

All damage to Units, and improvements located upon real estate subject hereto, shall be repaired, reconstructed and rebuilt from the proceeds of insurance collected by the Insurance Trustee, or from collections of assessments against owners on account of such casualty not covered by insurance. Such reconstruction and repair is mandatory unless other action is approved, by the Owners set forth herinafter.

If the cost of replacement, reconstruction or repair of an

under each policy shall be vested in the Board of Directors of the Association, as agent, attorney-in-fact or trustee for the townhouse unit Owner and his Mortgagee;

- (c) In no event may the insurance coverage obtained and maintained pursuant to the requirements of this Declaration be brought into contribution with insurance purchased by the Owners of individual townhouse units or their Mortgagees, or Trustees and any "no other insurance" or similar clause in any policy obtained by the Association pursuant to the requirements of this Declaration shall exclude such policies from consideration;
- (d) All policies shall provide that such policies may not be cancelled or substantially modified, including cancellation for nonpayment of premium, without at least thirty (30) days prior written notice to the townhouse unit Owner, the Board of Directors of the Association and the Mortgagee;
- (e) All policies shall provide that the Mortgagee will be notified by the insurance company of any claim for recovery of damages exceeding One Thousand Dollars (\$1,000.00); and
- (f) All policies shall contain a waiver of subrogation by the insurer as to claims against the Association, the Board of Directors, the Owner of any individual townhouse unit and/or their respective agents, employees and tenants.

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

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 Board of Directors of the Association may employ an architectural control committee or other qualified person who shall be in charge of all replacement, reconstruction and repair of all improvements. Reconstruction of the building(s), as used in this paragraph, means restoring the building(s) substantially to the same condition in which it or they existed prior to the fire, casualty or other disaster, with each Unit and the Common Area having the same vertical and other boundaries as previously existed. Each request for disbursement of insurance proceeds held by the Association as insurance trustee, or its designated nominee, shall include a certificate of the architectural committee or other qualified person employed by the Association to the effect that all work then completed has been performed in accordance with plans and specifications approved by the Board of Directors of the Association and all applicable building codes. All insurance policies shall be subject to the extent available to the following provisions:

- (a) All policies shall be written with a company or companies licensed to do business in the State of Kansas holding a rating of BBB+ or better in Best's Insurance Guide, or some other equivalent insurance guide reference directory;
- (b) Exclusive authority to negotiate losses

Owner may purchase insurance upon his own personal property and any additional improvements located within his individual townhouse unit. Such insurance shall contain the same waiver of subrogation provisions set forth above.

Under the TOWNHOUSE OWNERSHIP ACT OF KANSAS, 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, the provisions of this Declaration relating to individual policies of casualty insurance and the rights, obligations, procedures and requirements heretofore set forth in connection therewith, shall nevertheless apply, except the provision releasing the Association from any liability for payment of premium, renewal of policies, contents of policy and failure to collect proceeds. 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 provide coverage for each townhouse Unit upon such terms and conditions as the Board of Directors of the Association may deem appropriate, provided however, the coverage shall be not less than the coverage required by this Declaration applicable to individual policies of casualty insurance, and provided further, provision for such blanket insurance shall be without prejudice to the right of each townhouse Unit Owner to insure his own 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 and individual policies of casualty insurance; and, if the damage for which the casualty loss proceeds are paid was limited solely to units insured under said individual homeowners policies, then, the

remaining proceeds after paying all reasonable costs and expenses related to the administration of the insurance trust, and after paying reconstruction or repair costs, shall be paid over to the unit Owners thereof and their respective first Mortgagees as their interests may appear. If the damage for which the casualty loss proceeds are paid includes the Common Areas and/or one or more Units covered by the blanket policies, as well as Units individually insured, then all remaining proceeds, after paying the costs set out above, shall be paid over to the Association, and to the Unit Owners individually insured and their respective first Mortgagees as their interests may appear pursuant to such fair and reasonable formula governing the pro-ration thereof as the Board of Directors of the Association shall, in its sole discretion, determine which determination shall be final and binding on all of the aforesaid parties. In the event that there are no 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 paying all reasonable costs and expenses related to the administration of the insurance trust and after paying reconstruction or repair costs shall be paid over, or retained by the Association.

Annually, the Association may require 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

(Restrictive Covenants)

No building, fence, wall or other structure shall be

commenced, erected or maintained upon the properties (excepting any original construction or development by the Declarant) nor shall any exterior addition to or change or alteration therein be made (except by the Declarant) nor shall any owner erect, place, install or attach any sign, light, object or thing on the exterior of the building or on any common area 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 limitation, any other information specified by the Board shall have been submitted to and approved by it 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. The term Board shall include any committee to which it may delegate the authority granted herein.

In the event the Board, fails 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 Board pursuant to the provisions of this Article shall be commenced within six (6) months following the date upon which the same are approved (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 Board 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 Board without the prior consent in writing of the Board. Approval

of any particular plans and specifications or design shall not be construed as a waiver of the right of the Board 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.

The Board 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 Board 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 Board shall be final except that any Member who is aggrieved by any action or forbearance from action by the delegate of the Board (or by any policy, standards or guidelines established by such delegate) may appeal the decision of the delegate 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 its 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. Declarant and/or the Management Company may maintain an office for the purpose of managing, selling and/or leasing the Units. Furthermore, Declarant shall also have the right to construct, maintain and utilize model Units for selling and other business purposes of the Project and in connection therewith, shall be entitled to erect, have or display signs consistent therewith, including directional signs at or within the Project premises.

2. Construction or Alteration of Improvements.

(a) The Declarant reserves the right to (a) make such changes and/or substitutions of materials and construction which are deemed necessary and in the best interest of the development or which are required by the lending institution; (b) determine the exterior color and design, including the reversal of lay-out and location of the building on the plot to fit into the general pattern of the development; (c) determine the grading and elevation of all plots; (d) determine the elevation of foundation and streets to conform to topographical conditions. At such time as Declarant has relinquished control as hereinbefore provided 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.

(b) The party requesting any approval hereunder shall submit simultaneously with said request the following documentation:

- (1) Four (4) exterior elevations delineating front elevation, back elevation, and both side elevations.

(ii) A site plan of the building and unit as it will be located on the lot.

(iii) A floor plan.

(iv) A list of all exterior materials to be used including materials for the roof, masonry, siding and windows.

(v) A landscape plan showing proposed exterior plantings.

(vi) A schedule of exterior colors.

3. Structures. No structure of a temporary character, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, playhouse, swimming pool, shed or other buildings shall be erected, used or maintained on any Unit at any time, except that the Board may approve such structure as provided for in Article IX.

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 buildings or units.

5. Signs. Except as set forth under paragraph 1 of this Article hereinbefore, no sign shall be hung or displayed either on the inside or the outside of any unit or building or otherwise or so as to be seen from the exterior, and no awnings, canopy, shutter or radio or television antenna shall be affixed to, or placed upon an exterior wall or roof without the prior written consent of the Association; provided, however, with the prior written consent of the Association, one "for sale" or "for rent" sign at any one time may be displayed by or on behalf of an Owner solely in the ground area in front of his Unit.

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. Automobile Repairing and Storage of Automobiles,
Boats, Trailers, etc.

(a) No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur on any of the lots except that automotive repairs on a non-commercial basis and not for hire may be conducted in any enclosed garage permitted under other provisions of these restrictions.

(b) No automobile, truck, motorcycle, motorbike, motor scooter, boat, airplane, house trailer, boat trailer, camping trailer, motor home, or vehicle of any other type or description may be stored upon any of the lots, except that such storage (excluding storage for hire) shall be permitted within the confines of any garage permitted under other provisions of these restrictions. Nothing in this Section, however, shall be construed to prohibit the regular parking of not more than two (2)

automobiles (excluding any pick-up truck with camper), in running condition and in a reasonable state of repair and preservation on any driveway permitted to be maintained on any of the lots.

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 of or improve any areas or surfaces of the properties maintained by the Association under the general maintenance provisions of this Declaration.

10. Required Height of Residences. A building erected on a lot shall not be more than two (2) stories in height; provided, however, that a building more than two (2) stories in height may be erected thereon with the consent in writing of the Declarant.

11. Frontage of Residences on Streets. Any building erected on a corner lot shall front on such streets in a manner designated by the Declarant.

12. Said Restrictions Not Applicable to Association. The foregoing covenants of this ARTICLE X shall not apply to the activities of SITUS PLACE HOMES ASSOCIATION, a not-for-profit corporation incorporated or to be incorporated under the laws of the State of Kansas, or to Declarant. Declarant may maintain, while constructing and selling the Units in or upon such portions of the Properties as Declarant determines, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs.

ARTICLE XI

PARTY WALLS

Each Unit to be constructed in SITUS PLACE will have at least one wall 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 electrical 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 served 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 of any townhouse unit 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 therefore, 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 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 Declarant, the Association, their successors and assigns, and any unit Owner, purchaser, Mortgagee or other person having interest in any unit, whether or not such easements are mentioned or described in any deed of 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 the Project, 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.

In addition, the Association may enter upon the patio area of any Unit to enforce the maintenance obligation of any Owner and may assess a charge against any such Owner for the costs of enforcing said covenant which shall become a part of the assessment.

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 this 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 cancelled, in whole or in part, by a written agreement signed by not less than two-thirds (2/3) of the Owners, then subject to this Declaration. Any agreement modifying, changing or cancelling these restrictions shall become effective upon the date of its recording in the Office of the Register of Deeds of Johnson County, Kansas.

ARTICLE XIV

AMENDMENTS

This Declaration may be amended and modified at any time in the following manner.

1. By Declarant. Until such time as the first townhouse Unit is conveyed by Declarant, Declarant in its sole discretion may abolish said covenants, conditions, provisions and restrictions or change them, in whole or in part, by filing a document with the Register of Deeds, Johnson County, Kansas.

2. By Owners. The covenants, conditions, provisions and restrictions of this Declaration may be amended or changed, at any time, in whole or in part with the written consent of two-thirds (2/3) of all members. Said amendment along with the written consents thereto shall be filed with the Register of Deeds, Johnson County, Kansas and shall be effective upon filing.

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 herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of 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 directive of any municipal or other governmental authority.

2. Successors of Declarant. Any and all rights, reservations, interests, privileges and/or powers of the Declarant hereunder may be assigned and transferred by the Declarant, with or without notice to the Association.

3. 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.

4. Consents. Unless at least two-thirds (2/3) of the Owners (other than the sponsor, developer or builder) of the

individual Units have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by the Association, for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of such common property shall not be deemed a transfer within the meaning of this clause;

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit Owner;

(c) by act or omission change, waive 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 the common property party walks or common fences and driveways, or the upkeep of lawns and plantings;

(d) fail to maintain fire and extended coverage on insurable common property on a current replacement cost basis in an amount not less than 100 percent of the insurable value (based on current replacement cost);

(e) use hazard insurance proceeds for losses to any common property for other than the repair, replacement or reconstruction of such common property.

5. 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.

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.

8. Notice Procedures. Whenever the Board of Directors is required hereunder to submit any matter to a vote of the membership, or when a public hearing of the membership is required before the Board may act upon any matter, the followup procedures shall govern:

- (a) Notice of the meeting shall be given to each Member which shall be accomplished by delivering one copy of the Notice to each Unit. A signed statement by the Secretary of the Association stating the Notice requirement has been met shall be presumptive proof that this section has been satisfied.
- (b) The Notice shall set forth the time and place of the meetings, the subject(s) to be considered, and the action required of the Members.
- (c) Notice shall be given as prescribed not less than twenty (20) days prior to the meeting nor more than sixty (60). If Notice is mailed the date of mailing shall count as the first day of the Notice period.

9. Annexation.

- (a) By Declarant. The Declarant shall have, and expressly reserves, the right (without the consent of any owner or any other party) from time to time to add such other land as it may now own or

hereafter acquire, to the operation of the provisions of this Declaration of Restrictions, by executing and acknowledging any appropriate agreement or agreements for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas. When any other land is so subjected to the provisions hereof, whether the same consists of one or more tracts or whether said additions shall be made at one or more times, said land so added shall be subject to all of the terms and provisions hereof, in the same manner and with like effect as though the same had been originally described herein and subjected to the provisions hereof.

- (b) By Owner. Upon the affirmative vote of two-thirds (2/3) of a quorum of members present at a meeting called in accordance with the provisions hereof, the Association shall be authorized to file with the Recorder of Deeds, Johnson County, Kansas, an amendment annexing and subjecting additional lands to the terms, conditions and restrictions hereof. Such annexation shall be effective upon filing.

10. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations mortgaging of Common Area, dedication of Common Area, dissolution and amendment of these Articles.

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

Lester T. Cook
Lester T. Cook

Kathryn I. Cook
Katherine I. Cook

HOUSE AND HOME CONSTRUCTION, INC.

By Walter J. Klassen
Walter J. Klassen



C. Joyce Pratt
Secretary
C. Joyce Pratt

ACKNOWLEDGMENT

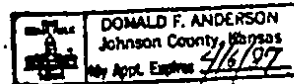
STATE OF KANSAS)
) SS
COUNTY OF)

BE IT REMEMBERED that on this 11 day of September, 1984, before me, the undersigned, a Notary Public in and for the County and State set forth above, personally appeared LESTER T. COOK and CATHERINE I. COOK, husband and wife, to me personally known to be the same persons who executed the above and foregoing instrument of writing and duly acknowledged the execution of same.

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

Donald F. Anderson
Notary Public

My commission expires: 4/6/87



ACKNOWLEDGMENT

STATE OF KANSAS)
) SS
COUNTY OF)

BE IT REMEMBERED that on this 11th day of September, 1984, before me, the undersigned, a Notary Public in and for the County and State set forth above, personally appeared Walter J. Klassen, known to me to be the President, of HOUSE AND HOME CONSTRUCTION, INC., a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas; who is personally known to me to be the same person who executed, as such officer, the above and foregoing instrument on behalf of said corporation and such person duly acknowledged execution of the same to be the free act and deed of said corporation.

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



Richard D. Simpson
Notary Public

My Commission Expires: 10/4/84

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