

BARRYBROOKE VILLAGE
& RACQUET CLUB

This is a copy of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS originally filed and recorded on February 23, 1976 with the Office of the Recorder of Deeds of Platte County, Missouri AND as modified by the following succeeding amendments:

- o Special Amendment No. 1 filed and recorded September 20, 1976 (Exhibit A) and subsequently filed as a Supplementary Declaration July 19, 1982.
- o Amendment adopted January 21, 1985 (Article 6. Sections 6.3(a) and 6.3(g).)
- o Amendment adopted March 12, 1992 (Article 8. Sections 8.2, 8.3 and 8.6; Article 11. Sections 11.1(r) and 11.1(s); AND Article 13. Sections 13.3, 13.12(a) and 13.12(b).)
- o Amendment adopted _____ (Article 7. Sections 7.2, 7.3, 7.4, 7.5, 7.6 and a repeal of Section 7.7 AND a complete rewrite of Article 9.)

BARRYBROOKE VILLAGE & RACQUET CLUB

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS	1
ARTICLE 2 PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERE TO	2
Section 2.1. Existing Property	2
Section 2.2. Additions to Existing Property.	2
ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION	3
Section 3.1. Qualification	3
Section 3.2. Classes	3
ARTICLE 4 PROPERTY RIGHTS IN THE COMMON PROPERTIES.	4
Section 4.1. Members' Easements of Enjoyment	4
Section 4.2. Title to the Common Properties.	4
Section 4.3. Extent of Members' Easements.	4
Section 4.4. Rights Not Subject to Suspension.	5
Section 4.5. Delegation of Right of Use.	5
ARTICLE 5 COVENANT FOR MAINTENANCE ASSESSMENTS.	5
Section 5.1. Creation of the Lien and Personal Obligation of Assessments	5
Section 5.2. Purpose of Annual Assessments	6
Section 5.3. Basis of Annual Assessments; Limitations Thereon Except for Insurance.	6
Section 5.4. Special Assessments	7
Section 5.5. Excess	7
Section 5.6. Uniform Rate of Assessment.	7
Section 5.7. Date of Commencement of Annual Assessments: Due Dates.	7
Section 5.8. Duties of the Board of Directors with Respect to Assessments.	8
Section 5.9. Equitable Adjustments - Supplementary Declarations of Covenants, Conditions and Restrictions.	8

Section 5.10.	Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of Association; Maintenance and Enforcement of the Lien by the Declarant; Notice to Mortgagee.	9
Section 5.11.	Priority of Lien.	10
Section 5.12.	Additional Default.	10
Section 5.13.	Definition.	10
Section 5.14.	Assessment of Declaration	11
Section 5.15.	Exempt Property	11
Section 5.16.	Management Agreements	11
Section 5.17.	Reserves for Replacement.	11
ARTICLE 6.	INSURANCE	12
Section 6.1.	Insurance to be Obtained and Maintained by the Association and/or Townhome Unit Owners.	12
Section 6.2.	Insurance; Requirements as to Insurer; Required Endorsements and Terms	13
Section 6.3.	Insurance Trustee	14
ARTICLE 7	PARTY WALLS	18
Section 7.1.	General Rules of Law to Apply	18
Section 7.2.	Sharing of Repair and Maintenance	18
Section 7.3.	Destruction by Fire or Other Casualty	18
Section 7.4.	Weatherproofing	18
Section 7.5.	Right to Contribution Runs With Land.	19
Section 7.6.	Encroachments	19
ARTICLE 8	ARCHITECTURAL CONTROL	19
Section 8.1.	Architectural and Environmental Control Committee	19
Section 8.2.	Architectural and Environmental Control Committee - Operation	19
Section 8.3.	Approvals, etc.	20
Section 8.4.	Limitations	20
Section 8.5.	Certificate of Compliance	20
Section 8.6.	Rules and Regulations, etc.	20
ARTICLE 9	EXTERIOR MAINTENANCE.	21
ARTICLE 10	YARD MAINTENANCE.	21

ARTICLE 11	USE RESTRICTIONS.	22
Section 11.1.	Prohibited Uses and Nuisances	22
Section 11.2.	Residential Use	24
Section 11.3.	Enforcement - Right to Remove or Correct Violations.	24
Section 11.4.	House Rules, etc.	25
ARTICLE 12	EASEMENTS	25
Section 12.1.	Utility Easements	25
Section 12.2.	Easements for Minor Encroachments	26
Section 12.3.	Blanket Easement.	26
Section 12.4.	Easement for Ingress and Egress	26
Section 12.5.	Association Easement.	26
ARTICLE 13	GENERAL PROVISIONS.	27
Section 13.1.	Duration.	27
Section 13.2.	Amendment by Declarant.	27
Section 13.3.	Amendment by Owners	27
Section 13.4.	Construction and Enforcement.	27
Section 13.5.	Limitation of Liability	27
Section 13.6.	Rights of Mortgagees.	28
Section 13.7.	Voting.	28
Section 13.8.	Successors of Declarant	28
Section 13.9.	Incorporation by Reference on Resale.	28
Section 13.10.	Notification of Sale of Lot	29
Section 13.11.	Notification as to Mortgagees	29
Section 13.12.	Consents.	29
Section 13.13.	Articles of Incorporation and By-Laws	30
Section 13.14.	Definition.	30
Section 13.15.	Personal Liability.	30
Section 13.16.	No Dedication to Public Use	30
Section 13.17.	Grammar	30
Section 13.18.	Notices	30
Section 13.19.	Severability.	30
Section 13.20.	Captions.	30
Section 13.21.	Special Amendments:	31

ARTICLE 1

DEFINITIONS

The following words when used in this Declaration or any Supplementary Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the Barrybrooke Village & Racquet Club Community Association, a Missouri not-for-profit corporation, and its successors and assigns.

(b) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association.

(c) "Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplementary Declaration prepared and filed of record pursuant to the provisions of Article 2 hereof.

(d) "Common Properties" shall mean and refer to those areas of land designated as Common Areas or Community Facilities on any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the Members of the Association, or subject to the control thereof, together with any and all improvements that are now or may hereafter be constructed thereon. In this declaration Common Properties shall include, without limitation, the following:

(i) All real estate owned in fee simple by the Association evidenced by Warranty Deed recorded in the office of the Recorder of Deeds of Platte County, Missouri.

(ii) All community buildings, swimming pools, tennis courts, playground equipment, recreational facilities, structures, trees, landscaping, lighting equipment, decorative equipment and other improvements located upon real estate owned by the Association.

(iii) All paved private drives, streets and open parking areas, together with sidewalks, paths and the like, located upon real estate owned by the Association.

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

(v) All easements, rights and appurtenances belonging thereto, necessary to the existence, maintenance and safety of the Properties and improvements constructed thereon.

(vi) All personal property owned by the Association intended for use in connection with the operation of swimming pools, tennis courts, recreational facilities, buildings, structures and other facilities of the Association.

(e) "Lot" shall mean and refer to any plot or parcel of ground, shown on any recorded subdivision plat of the Properties or any recorded minor lot-split survey thereof, on the surface of which is located the entire ground area of a Townhome Unit.

(f) "Townhome Unit" shall mean and refer to one single family residential unit the entire ground area of which is located on a Lot, and which is to be individually owned and conveyed. A Townhome Unit may also include a non-attached garage or carport.

(g) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Townhome Unit which is a part of the Properties but, notwithstanding any applicable theory of mortgages, deeds of trust or other security devices, shall not mean or refer to any Mortgagee unless and until such Mortgagee has acquired title pursuant to power of sale, foreclosure or any proceeding in lieu thereof.

(h) "Member" shall mean and refer to each Owner as provided herein in Article 3.

(i) "Declarant" shall mean and refer to the Barrybrooke Village & Racquet Club Association, a Missouri not-for-profit corporation, and its successors and assigns.

(j) "Existing Property" shall mean and refer to the real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration pursuant to Section 2.1 of Article 2.

(k) "Mortgagee" shall mean and refer to the holder of a first deed of trust, mortgage or other equivalent lien on a Townhome Unit and Lot.

ARTICLE 2

PROPERTY SUBJECT TO THIS DECLARATION, ADDITIONS THERETO

Section 2.1. Existing Property. The real property which is, and shall be, held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration (hereinafter defined as "Existing Property") is located in Kansas City, Platte County, State of Missouri, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2.2. Additions to Existing Property. Additional lands may become subject to this Declaration by any of the following methods:

(a) If Declarant is the owner of any real property, whether or not abutting or contiguous, which it desires to add to the scheme of this Declaration, it may do so without the consent of Class A Members at any time and from time to time until July 31, 1990, by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, which shall extend the scheme of the Covenants, conditions and restrictions of this Declaration to such property and all improvements thereon; PROVIDED, HOWEVER, that such Supplementary Declaration may contain such additions and modifications of the covenants, conditions and restrictions contained in this Declaration applicable solely to said additional properties as may be necessary or desirable as determined by Declarant to reflect the different character, if any, of the added properties and the improvements thereon. In no event, however, shall such Supplementary Declaration modify or add to the covenants established by this Declaration for the Existing Property so as to make the same more burdensome to Owners of the Existing Property without the written consent of fifty-one percent (51%) or more of each class of the then Members of the Association.

(b) Upon the approval of a majority of both classes of the Members of the Association as provided in its Articles of Incorporation, the owner of any property who desires to add to it the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants, Conditions and Restrictions. (Special Amendment No.1 which was filed on September 26, 1976 was approved by the Membership as described in ARTICLE 13, Section 13.21.)

(c) Upon a merger or consolidation of the Association with another not-for-profit corporation (for example and not by way of limitation, a condominium association adopted with respect to the existing Property or additional Articles of Incorporation, its properties, rights and obligations made by operation of law, the transfer to another surviving or consolidated not-for-profit corporation, or, alternatively, properties, rights and obligations of another not-for-profit corporation may by operation of law, be added to the properties, rights and obligations of the Association as the surviving not-for-profit corporation pursuant to a merger. The surviving or consolidated not-for-profit corporation may administer the covenants, conditions and restrictions established hereby for the existing property, together with the covenants and restrictions established upon any other property as one residential community. No such merger or consolidation, however, shall effect 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 in accordance with the provisions hereof.

ARTICLE 3

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 3.1. Qualification. Every person or entity who is a record Owner of a fee or undivided fee interest in one or more Townhome Units subject to the covenants, conditions and restrictions established by this Declaration shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separate from ownership of any Unit which is subject to the covenants, conditions and restrictions established by this Declaration. Record ownership of such Unit shall be the sole qualification for membership.

Section 3.2. Classes. The Association shall have two (2) classes of voting membership:

(a) **CLASS A.** Class A Members shall be all those Owners as defined in Section 3.1 of this Article with the exception of the Declarant. Members shall be entitled to one (1) vote for each Unit in which they hold the interest required for membership by Section 3.1 of this Article. When more than one (1) person holds such interest in any Townhome Unit, all such persons shall be Members and the vote for such Townhome Unit shall be exercised as they, among themselves, determine; but in no event shall more than one (1) vote be cast with respect to any one Townhome Unit. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner or Owners cast a vote representing a certain townhome Unit, it will thereafter conclusively presume for all purposes that he or they were acting with the authority and consent of all other Owners of the same Townhome Unit. In the event more than one vote is cast for a particular Townhome Unit, none of said votes shall be counted and said votes shall be deemed void.

(b) **CLASS B.** Three (3) Class B memberships shall be issued to Declarant for each Lot developed with a Townhome Unit. The Class B Member shall be entitled to one (1) vote for each Class B membership so held. As each Townhome Unit is sold by Declarant, the buyer shall receive a Class A membership; Declarant shall retain its Class B memberships for each such Townhome Unit sold, provided, however, that each Class B membership shall lapse and become a nullity on the first to happen of the following:

(i) One hundred twenty (120) days after 400 Townhome Units have been constructed on the Properties and sold to third party purchasers;

(ii) Upon surrender of said Class B memberships by the then holder thereof for cancellation on the books of the association; or

(iii) On August 15, 1982.

Upon the lapse and/or surrender of all of the Class B memberships as provided for in this Article 3, the Declarant shall be and thereafter remain a Class A Member of the Association as to each and every Unit in which the Declarant holds the interest otherwise required for such Class A membership.

ARTICLE 4

PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 4.1. Members' Easements of Enjoyment. Subject to the provisions of Section 4.3 of this Article 4, every Member shall have a non-exclusive and non-severable right and easement of enjoyment in and to the Common Properties in common with all Owners, and such easement shall be appurtenant to and shall pass with the title to every Townhome Unit, and may not be severed therefrom. Such rights and easement shall be for the use of the Common Properties in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights and easements of other Owners.

Section 4.2. Title to the Common Properties. The Declarant may retain the fee simple title to the Common Properties until such time as it has completed such improvements thereon as it may elect to make and until such time as, in the opinion of the Declarant, the Association is able to maintain the same but, notwithstanding any provision herein, the Declarant hereby covenants, for itself, its successors and assigns, that it shall convey fee simple title to the Common Properties to the Association not later than July 31, 1990.

Section 4.3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The rights of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties;
- (b) The right of the Declarant and of the Association, in accordance with its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Properties and facilities in a manner designed to promote the enjoyment and welfare of the Members, and in aid thereof to mortgage the Common Properties;
- (c) The right of the Association to take such steps as are reasonably necessary to protect the common Properties against mortgage default and/or foreclosure: provided, always, however, that the same are in conformity with the other provisions of the Declaration;
- (d) The right of the Association, as provided in its Articles of Incorporation and By-Laws, to suspend the voting rights of any Member and to suspend the right of any Member to use any of the Common Properties and/or common facilities (except for rights to the use of streets, roadways and parking areas, which shall not be subject to suspension for any reason) for any period during which any assessment against a Townhome Unit owned by such Member remains unpaid, and for any period not to exceed thirty (30) days for any infraction of the published rules and regulations of the Association;
- (e) The right of the Association to charge reasonable admission and other fees for the use of any of the recreational and other common facilities situated upon the Common Properties by the Members of the Association and their families, and/or guests; provided, however, that any such fees shall be charged on a uniform basis for each Member;

(f) The right of the Association to adopt reasonable rules respecting use of the Common Properties to reasonably limit the number of guests of Members to the use of any facilities which are developed upon the Properties;

(g) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public or municipal agency, authority or utility for purposes consistent with the purpose of this 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 a majority 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 at least thirty (30) days prior to the taking of any action;

(h) The right of the Association, acting by and through its Board of Directors, to grant licenses, rights-of-ways 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-ways and/or easements shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the Common Properties;

(i) The right of the Association, acting by and through its Board of Directors, to open the Common Properties, 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;

(j) The rights of the Owners of the Townhome Units to perpetual easement over and upon any of the Common Properties for such portions of their Townhome Units that may overhang or otherwise encroach upon any of the Common Properties for support, for the purpose of necessary repairs and maintenance, for the maintenance of reasonable appurtenances to their Townhome Units, and for reasonable ingress and egress to any from any Townhome Unit through and over the Common Properties;

(k) The rights of the Owners of Townhome Units with garages to the exclusive use of driveways connecting such garages to Association streets and ways, as established by deed from Declarant.

Section 4.4. Rights Not Subject to Suspension. Notwithstanding anything in this Declaration to the contrary, the Association shall have no right to suspend, limit or encumber, either temporarily or permanently, any of the rights created and described in subparagraphs (j) and (k) of Section 4.3 above for any reason whatsoever, or the right of any Owner to use and enjoy the Private drives, streets, parking areas, walks, entrances and exits on the Common Properties.

Section 4.5. Delegation of Right of Use. Any Member of the Association may delegate his rights to the use and enjoyment of the Common Properties to the members of his family who reside with him and/or to his guests, all subject to such reasonable rules and regulations which the Association may adopt and uniformly apply and enforce.

ARTICLE 5

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Townhome Unit (by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance) hereby covenants and agrees and shall be deemed to covenant and agree to pay to the Association or

with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the Townhome Unit and Lot against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof, including reasonable attorneys fees as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such Townhome Unit at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them; provided, however, a Buyer shall be personally liable for his prorata share of annual and special assessments for the assessment year in which his purchase takes place.

Section 5.2. Purpose of Annual Assessments. The annual assessments levied by the Association shall be used for the following current operating expenses, reserves and purposes:

- (a) Promotion of the recreation, health, safety and welfare of those persons residing within the Properties;
- (b) Routine repair, maintenance, care and operation of the Common Properties and all recreational and other common facilities situated upon the Common Properties, including, but not limited to the cost of painting, repair to or replacement of the exterior of any improvements on the Common Properties and the exterior surfaces of the wall, roof, and/or screen fence or wall of each Townhome Unit (base to top) exposed to view, the painting, repair or replacement of garages and carports, and the repair and replacement of any paved areas on the Common Properties;
- (c) Operation of the services and facilities devoted to, intended for, and related to the implementation of the enjoyment and use of the Common Properties and all recreational and other common facilities situated upon the Common Properties and of the Townhome Units situated upon the Properties by residents of the Properties;
- (d) Routine repair, maintenance and care (exclusive of repair of casualty damages and glass surfaces) of the exterior surfaces of the wall, roof, and/or screen fence or wall of each Townhome Unit (base to top), and its garage and/or carport;
- (e) Maintenance as to water tightness (exclusive of repair of casualty damage) of the roof of each Townhome Unit and its garage and/or carport;
- (f) Management (and any required legal and accounting expenses) of the Association as set forth in Section 5.15 of this Article;
- (g) Ad valorem and other taxes, and insurance premiums, on the Common Properties owned by the Association;
- (h) Establishment and maintenance of a reserve fund in the manner and for the purposes hereinafter more fully described in Section 5.16 of this Article;
- (i) The payment of such other charges and expenses as may be elsewhere required or authorized by this Declaration of Covenants, Conditions and Restrictions (see Article 9), 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.

Section 5.3. Basis of Annual Assessments; Limitations Thereon Except for Insurance. Annual assessments of charges, except the assessment for each Owner's pro rata share of the casualty insurance premium as hereinafter specifically set forth in Article VI hereof, shall remain constant from January 1 through December 31 of each year and be subject to the following limitations thereon: Until January 1st of the calendar year immediately following the conveyance of the first Townhome Unit to a Class A Member, the maximum annual assessment shall be \$480.00 per Unit (\$40.00 per month).

(a) From and after January 1st of the calendar year immediately following the conveyance of the first Unit to a Class A Member, the maximum annual assessment may be increased each year not more than ten percent (10%) above the maximum assessment for the previous year, plus the amount by which ad valorem real estate taxes, utility charges and casualty and other insurance premiums payable by the Association have increased over amounts payable for the same or similar items for the previous year, without a vote for the membership.

(b) From and after January 1st of the calendar year immediately following the conveyance of the first Unit to a Class A Member, the maximum annual assessment may be increased above the amount provided in Paragraph (a) of this Section 5.3 by a vote of fifty-one percent (51%) of a quorum all the Members of each Class who are present and voting in person or by proxy, at a meeting called for this purpose by not 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.

(c) 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 each Unit at an amount not in excess of the maximum allowable by this Section 5.3.

Section 5.4. Special Assessments. In addition to the annual assessments or charges for the purposes described in Section 5.2 of this Article and subject to approval by the affirmative vote of fifty-one percent (51%) of a quorum of all the Members of each Class 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 assessment, 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 by fifty-one percent (51%) of all the Members of each Class who are present and voting in person or by proxy at said meeting.

Section 5.5. Excess. In any year in which there is an excess of assessments received over moneys actually used for the purposes described herein, such excess may, upon written consent of all of the Members of each Class, be applied against and reduce the subsequent year's assessment or be refunded to the Members. This Section 5.5 shall automatically be repealed upon the revocation of Rev. Rul. 70-604, 1970-2, CB 9 promulgated by the Internal Revenue Service or upon a Court of competent appellate jurisdiction declaring such Rev. Rul. invalid or upon amendment of the Internal Revenue Code or the Treasury Regulations thereunder obviating the requirement of a membership vote to apply such excess to the subsequent year's assessments, or to refund the same in order that such excess be excluded from gross income of the Association.

Section 5.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Units, except the separately assessed pro-rata share of the casualty insurance premiums for each Townhome Unit Owner as hereinafter set forth in Article 6 hereof; and all such assessments shall be collected on a monthly basis; i.e., one-twelfth (1/12) of the total assessment on each Unit each month; provided, however, that the Board of Directors, upon resolution, may levy and collect assessments on a quarterly, semi-annual or annual basis. Except as otherwise provided with respect to the funding of the reserves for replacement hereinafter set forth in Section 16 of this Article 5, both annual and special assessments shall be due and payable to the Association, or its nominee if such nominee is a federally insured bank in Missouri or Kansas with trust powers, on the first day of each month in equal monthly installments unless otherwise provided as aforesaid.

Section 5.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessment for each Class A membership shall commence on the date a deed for the Townhome Unit to which such Membership is appurtenant is delivered by the Declarant to the Member. The first monthly installment of each such annual assessment shall be made for the balance of the month during which a deed for the Townhome Unit is delivered to

the Class A Member and shall become due and payable and a lien on the date a deed for the Townhome Unit is delivered to said Member. Except as hereinabove provided, the monthly installments of each such annual assessment for any Townhome Unit owned by a Class A Member for any month after the first month shall become due and payable to the Association or its nominee if such nominee is a Missouri or Kansas bank with trust powers, and a lien on the first day of each successive month. Any Class A Member may prepay one or more installment on any annual assessment of special assessment levied by the Association, without premium or penalty. Annual assessments may also be paid by, for or on behalf of Class A Member Townhome Unit Owners by their respective mortgagees or holders of deeds of trust of record thereon under such terms and agreements as the Association may from time to time deem appropriate by action of its Board of Directors.

Section 5.8. Duties of the Board of Directors with Respect to Assessments.

(a) The Board of Directors of the Association shall fix the date of commencement and the amount of and the time when due of each installment of the assessment against each Townhome Unit for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Townhome Units and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Owner or the Owner's Mortgagee. The omission of the Board of Directors, before the expiration of any annual assessment period to fix the amount of the annual assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article, or a release of any Class A Member from the obligation to pay the annual assessment, or any installment thereof, for that or any subsequent annual assessment period, but the annual assessment fixed for the preceding period shall continue until a new annual assessment is fixed.

(b) Written notice of the assessment shall thereupon be sent out to the Class A Members subject thereto.

(c) The Association shall upon demand at any time furnish to any Owner liable for any assessment levied pursuant to this Declaration (or any other party legitimately interested in the same) a certificate in writing signed by an officer of the Association, setting forth the status of said assessment; i.e., whether the same is paid or unpaid. A reasonable charge may be made by the Board of Directors, in advance, for the issuance of any such certificate. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid.

(d) The Association shall enforce the payment of assessments in accordance with the provisions of Section 5.10 of this Article 5.

(e) No Member of the Board or any Committee of the Association, or any officer of the Association, or Declarant, or the Manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager, if any, or any other representative or employee of the Association, the Declarant, or the Architectural and Environmental Control Committee, or any other Committee, or any officer of the Association, or Declarant, provided that such person has, upon the basis of such information as then may be possessed by him, acted in good faith without willful or intentional misconduct.

Section 5.9. Equitable Adjustments - Supplementary Declarations of Covenants, Conditions and Restrictions. In the event that any Supplementary Declaration of Covenants, Conditions and Restrictions made pursuant to the provisions and requirements of Section 2.2 of Article 2 hereof provides that a greater or lesser level of services shall be provided by the Association with respect to the real property and the improvements thereon described in such Supplementary Declaration of Covenants, Conditions and Restrictions, then such Supplementary Declaration of Covenants, Conditions and Restrictions may provide for a different basis for the establishment of annual and special assessments with respect to such real property and the improvements thereon and the Association, acting by and through its Board of Directors, is hereby authorized and directed to make equitable adjustments in the procedures herein set forth for the establishment of annual and special assessments to reflect the different level of services.

Section 5.10. Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of Association; Maintenance and Enforcement of the Lien by the Declarant; Notice to Mortgagee.

(a) If any assessment or any part thereof is not paid on the date when due, as herein provided, then the unpaid amount of such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof, including reasonable attorneys' fees, as hereinafter provided, thereupon become a continuing lien on the Townhome Unit or Units of the non-paying Owner which shall bind such Townhome Unit or Units in the hands of the then Owner, his heirs, executors, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. No Class A Member may waive, have waived or otherwise escape liability for the assessments provided herein by non-use of the Common Properties or abandonment of his Townhome Unit.

(b) If any assessment or part thereof is not paid within ten (10) days after the due date, the unpaid amount of such assessment may, upon resolution of the Board of Directors, bear interest from the due date at the rate of ten percent (10%) per annum and may, by resolution of the Board of Directors, subject the Member obligated to pay the same to the payment of such penalty or "late charge" as the Board may fix, and the Association may bring an action at law against the Member personally obligated to pay the same in order to enforce payment or foreclosure on the lien against the Townhome Unit or Units then belonging to said Member in the same manner now or hereafter provided for the foreclosure of mortgages, deeds of trust or other liens on real property in the State of Missouri containing a power of sale, and subject to the same requirements, both substantive and procedural, or as may otherwise from time to time be provided by law, and in either of which events there shall be added to the amount of such assessment the costs of preparing and filing the complaints in such action and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action, all of which shall not be less than twenty percent (20%) of the sum claimed. Suit for a money judgment for unpaid assessments shall be maintainable by the Association without foreclosing or waiving the lien securing same. The lien against any Unit shall continue for a period of one (1) year from the date of delinquency and no longer unless suit shall have been filed. In the event suit is filed within one (1) year from the date of delinquency, the lien shall continue until the final adjudication of the suit, including appeals, if any, and until sale of the Townhome Unit under the execution of the judgment rendered.

(c) The Association shall, by its own action or upon request of the holder of the first mortgage on any Townhome Unit or Units, notify the Mortgagee of any Townhome Unit or Units for which any assessment levied pursuant to this Declaration becomes delinquent for a period of thirty (30) days or more, and in any other case where the Owner of such Townhome Unit or Units is in default with respect to the performance of any other obligation hereunder for a period of thirty (30) days or more, but any failure to give, or to request, such notice shall not affect the validity of the lien for any assessment levied pursuant to this Declaration, nor shall any such failure affect any of the priorities established in the Article. The Association shall take no action or foreclose the lien herein provided as security for the payment of assessments, except after notice in writing to the Mortgagee of record on the Townhome Unit or Units involved if such holder has given the Association its address to which such notices are to be mailed.

(d) Upon default in the payment of any one or more monthly installments of any assessment levied pursuant to this Declaration, or any other installment thereof, the entire balance of said assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full.

(e) 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 locations within the Properties, provided that the Board shall attempt to give such Members at least ten (10) days' prior written notice of its intent to so post.

(f) In the event of dissolution of the Association, or if the Association fails or refuses to adequately maintain the appearance and condition of the Common Properties and all recreational and other common facilities situated upon the Common Properties, which it is obligated to maintain under the provisions hereof, the Declarant shall have the right but not the responsibility and may assume the duty of performing all such maintenance and obligations of the Association (i) at any time after such dissolution on giving written notice to the Owners, or (ii) at any time after the expiration of ten (10) days after receipt by the Association of written notice from the City of Kansas City, Missouri, or Declarant, setting forth in detail the nature and extent of such failure unless such failure shall have been remedied within said ten (10) day period. Pursuant to this end, the Declarant may collect the annual assessments as set by the Board of Directors from time to time in the manner hereinabove provided and the special assessments, if any, levied by the Association as provided for in Section 5.4 of this Article when the same shall become due and, if necessary, enforce the payment of delinquent assessments in the manner set forth in this Declaration. The power and authority herein granted to the Declarant shall cease to exist at such time as the Association shall deliver to the Declarant substantial evidence of its willingness and ability to resume maintenance of the Common Properties and of all recreational and other common facilities situated upon the Common Properties.

Section 5.11. Priority of Lien. The liens established by this Declaration shall have preference over any other assessments, liens, judgments or charges of whatever nature, except the following:

- (a) General and special assessments for real estate taxes on the Townhome Unit; and
- (b) The lien of the assessments or charges, regular and special provided for herein, shall be subordinate and inferior to the lien of any first mortgage or deed of trust now or hereafter placed upon any Townhome Unit subject to assessments or charges; provided, however, that such subordination shall apply only to the assessment or charge which becomes due and payable prior to the sale, decree of foreclosure of any such mortgage or pursuant to the terms and conditions of any such deed of trust or deed in lieu of foreclosure. Said sale or deed in lieu of foreclosure shall not relieve such Townhome Unit from liability for the amount of any assessments or charges thereafter becoming due, nor from the lien of any such subsequent assessment or charge. Any Mortgagee who comes into possession of any Townhome Unit pursuant to the remedies provided in the first mortgage or deed of trust or who acquires title of any Townhome Unit pursuant to foreclosure or deed (or assignment) in lieu of foreclosure, shall take title free of any claims for unpaid assessments or charges against the Townhome Unit which accrued prior to the date said Mortgagee comes into possession or title is acquired by said Mortgagee except for claims from a pro rata reallocation of such unpaid assessments or charges to all Townhome Units, including the Townhome Unit so possessed or acquired by the Mortgagee.

No amendment to this Declaration shall affect the rights of the holder of any mortgage (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment.

The Board of Directors may, in its sole and absolute discretion, extend the provisions of this Section to the holders of mortgages (or the indebtedness secured thereby) not otherwise entitled thereto as herein provided.

Section 5.12. Additional Default. Any recorded first mortgage secured on a Townhome Unit in the Properties shall provide that any default by the Member in the payment of any assessment or any installment thereof levied pursuant to this Declaration shall likewise be a default in such mortgage (or the indebtedness secured thereby) but failure to include such a provision in any such mortgage shall not affect the validity or priority of such mortgage and the protection extended to the holder of such mortgage (or the indebtedness secured thereby) by reason of Section 5.11 of this Article shall not be altered, modified or diminished by reason of such failure.

Section 5.13. Definition. As used in this Declaration, the term "mortgage" shall include a first mortgage and a first deed of trust and the terms "holder" and "Mortgagee" shall include the party secured by any first mortgage, first deed of trust or any beneficiary thereof.

Section 5.14. Assessment of Declarant. Anything in this Declaration to the contrary notwithstanding, no Townhome Unit held by the Declarant shall be subject to assessment (whether general, special or reserve) by the Association until the occurrence of either of the following events:

(a) With respect to any Townhome Unit held by the Declarant, ninety (90) days following completion and the issuance by the appropriate agency of the City of Kansas City, Missouri, of a Certificate of Occupancy, or the like, for such Unit; or

(b) With respect to any Townhome Units then held by the Declarant, sixty (60) days following the lapse of all of the Class B memberships.

Section 5.15. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge and lien created herein: (a) all properties dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article 1 hereto; (c) all areas, if any, reserved by the Declarant on the recorded plat of the Properties; provided however, that no land or improvements devoted to dwelling use shall be exempt from the assessments herein provided.

Section 5.16. Management Agreements. The Board of Directors of the Association shall enter into a management agreement to provide for the professional management of the affairs of the Association and for the operation and/or care and maintenance of the Common Properties, all recreational and other common facilities therein, and all other property and improvements as herein set forth to be the responsibility of the Association and said management agreement may contain such provisions and delegation of authority as the Board of Directors of the Association deems necessary or advisable and each Owner, by accepting title to his Townhome Unit, agrees to and shall be bound by the terms and conditions of any such management agreement entered into by the Association. No such management agreement shall be for a term in excess of one year, although the same may be renewable by agreement of the parties for successive one year periods. A copy of any such agreement shall be available to the Townhome Unit Owners and Mortgagees at the office of the Association. Any management agreement entered into by the Association shall provide that said management agreement may be canceled, upon thirty (30) days' written notice, by an affirmative vote of two-thirds (2/3) of the votes of each class of the then Members of the Association who are voting in person or by proxy at a meeting duly called for that purpose, written notice of which shall be given to all Members at least ten (10) days in advance and shall set forth the purpose of such meeting. In no event shall such management agreement be canceled prior to the affecting by the Association of a new management agreement, which new management agreement will become operative immediately upon the cancellation of the preceding agreement. It shall be the duty of the Association to effect a new management agreement prior to the expiration of the term of any prior management agreement. All management agreements shall be made with responsible parties having experience adequate for the management of a development of this type. The manager under such agreement shall be entitled to compensation, and the amount of compensation set by the management agreement shall be deemed reasonable. Nothing herein shall be deemed to prohibit any Owner, Member or any Partner of Declarant to participate in the management as established by such Management Agreement.

Section 5.17. Reserves for Replacement. The Association shall at all times, include in the annual/special assessments levied pursuant to Article 5 hereof adequate sums for the establishment and maintenance of a reserve fund for replacements of the Common Properties, painting, repair to or replacement of the exterior of any improvements on the Common Properties and of the exterior surfaces of the wall of each Townhome Unit (base to top) and its garage or carport; the repair and/or replacement of roofs, fences, etc.; and the repair and replacement of any paved areas on the Common Properties (as set forth in Article 9.) The amount of such annual assessment applicable to the reserve fund for replacements shall be funded by regular monthly payments from the Townhome Unit Owners to the Insurance Trustee designated pursuant to Section 6.3 of Article 6 hereof. The Trustee receiving such funds from the Townhome Unit Owners shall set the reserve fund for replacements apart each month as a separate trust, and shall segregate such reserve funds placed in said trust in a manner whereby no part thereof may be used by the Association or any Townhome Unit Owner for operating expenses. Funds

from said reserves shall be disbursed by the Trustee upon written direction from the Association only for the purpose of defraying the cost of replacement of the Common Properties, painting, repair to or replacement of the exterior of any improvements on the Common Properties and of the exterior surfaces of the wall and/or screen fence or wall of each Townhome Unit, garage and/or carport (base to top) exposed to view and the repair or replacement of any paved areas on the Common Properties. The Trustee shall render periodic reports to the Association 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 Townhome Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Townhome Unit to which it appertains and shall be deemed to be transferred with such Townhome Unit, except as may be otherwise proved in Section 5.5 hereof.

ARTICLE 6

INSURANCE

Section 6.1. Insurance to be Obtained and Maintained by the Association and/or Townhome Unit Owners. The Association shall have the right and obligation to obtain and continually maintain to the extent reasonably available, the following policies of insurance for the benefit of the Association, the Townhome Unit Owners, and the holders of first mortgages or deeds of trust of record thereon, as their interests may appear. If applicable Missouri laws or regulations prohibit the Association from obtaining and continually maintaining a master policy for fire and extended coverage insurance as hereinafter described in Paragraph (a) of the Section 6.1 for all of the Townhome Units and other improvements, if any, then, in such event, each Townhome Unit Owner shall obtain and continually maintain an individual policy or policies of fire and extended coverage insurance written in strict accordance with all of the requirements hereinafter set forth in this Article 6 with respect to said fire and extended coverage insurance. Such policy or policies shall provide that payments for losses thereunder by the insurer shall be made to the Insurance Trustee hereinafter designated as Trustee for the Townhome Unit Owners, the holders of first mortgages or deeds of trust of record thereon, and the Association, as their interests may appear.

(a) Property damage insurance in a total amount equal to the full current replacement cost (i.e., one hundred percent (100%) of the insurable value based on current replacement cost) of the improvements located upon the Common Properties owned by the Association and of the Townhome Units and other improvements, if any, with a "replacement cost" or "agreed amount" endorsement, without deduction or allowance for depreciation. The total amount of such insurance coverage shall be determined annually by the Association with the assistance of the insurance company issuing the policy and said insurance shall afford protection against at least the following:

(i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement;

(ii) 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 and such other insurance as the Board of Directors of the Association may from time to time determine.

(b) Comprehensive public liability and property damage insurance, in such amounts and for such coverage as may be determined and considered appropriate by the Association (but not less than \$1,000,000 covering all claims for personal injury and/or property damage arising out of a single occurrence), 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 use of the Common Properties and facilities, respectively.

(c) Workmen's compensation insurance to the extent necessary to comply with any applicable law.

(d) A "Legal Expense Indemnity Endorsement," or its equivalent, to the extent permitted by applicable law, 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.

(e) Fidelity insurance against dishonest acts on the part of Directors, managers, trustees, agents, employees or volunteers responsible for handling funds collected and held for the benefit of the Townhome Unit Owners in an amount sufficient to provide protection for at least one and one-half (1 1/2) times the Association's estimated annual operating expenses and reserves. In connection with such coverage, and appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.

(f) Such other insurance as the Board of Directors of the Association shall determine from time to time to be necessary or desirable.

Section 6.2. Insurance: Requirements as to Insurer: Required Endorsements and Terms. All insurance policies obtained pursuant to the requirements of this Declaration by the Association for and on behalf of the Association, the Townhome Unit Owners, and the holders of first mortgages or deeds of trust of record thereon, as their interests may appear, or by the Townhome Unit Owners, as hereinabove provided, if a master policy for fire and extended coverage insurance cannot be obtained and continually maintained for all of the Townhouse Units, shall be subject to the following requirements:

(a) All policies shall be written with a company or companies licenses to do business in the State of Missouri, holding the rating of A:AA or better in Best's Insurance Guide, or with like rating in some other equivalent insurance guide reference directory.

(b) Exclusive authority to negotiate losses under said policies shall be vested in the Association, as agent or trustee for itself, as well as all the Townhome Unit Owners, and the holders of first mortgages or deeds of trust of record thereon, as their interests may appear.

(c) In no event may the insurance coverage obtained and maintained by the Association pursuant to the requirements of this Declaration be brought into contribution with insurance purchased by the Owners of individual Townhome Units or their holders of first mortgages or deeds of trust of record thereon, 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 property damage insurance policies shall contain an endorsement waiving any "increase of hazard" provision, or a statement that insurance coverage shall not be prejudiced by the act of neglect of any person when the act of neglect of any person is beyond the control or not with the knowledge of the Association.

(e) All property damage insurance policies shall contain an endorsement that the policy may not be canceled or substantially modified, including cancellation for nonpayment of premiums without at least thirty (30) days prior written notice to all named insureds, including the holders of the first mortgage or deed of trust of record thereon.

(f) All insurance policies shall contain an endorsement waiving apportionment of loss in the event of other insurance insuring the same risk, an endorsement waiving the right of subrogation by the insurer as to any claims against the Association, the Board of Directors of the Association, the Townhome Unit Owners, and their respective agents, employees, tenants and guests, as a "Severability of Interest" endorsement precluding the insurer from denying the claim of a Townhome Unit Owner because of negligent acts of the Association or other Townhome Unit Owners, and their respective agents, employees, tenants and guests.

(g) All insurance policies shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee for the benefit of all Townhome Unit Owners, all holders of first mortgages or deeds of trust of record thereon, and the Association, as their interest may appear.

(h) Any mortgages endorsement shall require the holder of the first mortgage or deed of trust of record thereon to allow all proceeds of such insurance to be used for reconstruction or repair of the improvements as set forth in this Declaration and shall not require or allow the said holder of the first mortgage or deed of trust of record thereon to demand payment of any portion of the insurance proceeds for repayment of any loan secured by such mortgage or deed of trust; and, by taking and recording any such mortgage or deed of trust upon the Properties or any part hereof, the holder thereof shall be deemed to have consented to the provisions hereof, notwithstanding anything in said mortgage or deed of trust to the contrary.

Section 6.3. Insurance Trustee.

(a) The Treasurer of the Board of Directors of the Association shall at all times be designated by the Association as the Insurance Trustee for the benefit of the Association, the Townhome Unit Owners, and the holders of all first mortgages or deeds of trust of record thereon, as their interest may appear. The Insurance Trustee shall not be liable for payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance premiums from Townhome Unit Owners or insurance proceeds. The duty of the Insurance Trustee shall be to receive insurance proceeds and such casualty loss proceeds as are paid and hold the same in trust for the purposes stated in this Declaration for the benefit of the Association, the Townhome Unit Owners, and their holders of first mortgages or deeds of trust of record thereon. The Insurance Trustee shall be subject to all the terms, provisions and restrictions set forth in this Declaration. He shall be fully bonded and all funds in his hands as Trustee shall be deposited in interest bearing federally insured accounts. (As amended January 21, 1985.)

(b) Casualty loss proceeds from insurance received by the Insurance Trustee shall be distributed to or for the benefit of the Association, the Townhome Unit Owners, and their holders of first mortgages or deeds of trust of record thereon, as their interests may appear, in the following manner:

(i) All reasonable expenses related to administration of the insurance trust shall be first paid or provision made therefor.

(ii) If the damage for which the casualty loss proceeds are to be paid is to be reconstructed or repaired, the remaining casualty loss insurance proceeds shall be utilized to defray the costs thereof as hereinafter provided. Any proceeds remaining after defraying such reconstruction or repair costs in full, shall be distributed in the following manner:

(1) If the damage for which the casualty loss proceeds are paid was limited solely to the Common Properties, then one hundred percent (100%) of such remaining proceeds shall be paid over to the Association.

(2) If the damage for which the casualty loss proceeds are paid was limited solely to Townhome Units, then one hundred percent (100%) of such remaining proceeds shall be paid over, jointly, to the Townhome Unit Owners of the damaged Townhome Units and their holders of first mortgages or deeds of trust of record thereon, pursuant to such formula as the Board of Directors of the Association shall determine, based upon the same proportion each to the other as the damage of such Townhome Unit bears to the damage of all Townhome Units damaged.

(3) If the damage for which the casualty loss proceeds are paid encompassed both the Common Properties and one or more Townhome Units, then one hundred percent (100%) of such remaining proceeds shall be paid over to the Association and jointly to the Townhome Unit Owners of the damaged Townhome Units and their holders of first mortgages or deeds of trust of record thereon, pursuant to such formula as the Board of Directors of the Association shall determine, based upon the same proportion each to the other as the damage to the Common

Properties bears to the damage of all Townhome Units damaged and thereafter, insofar as the Townhome Unit Owners of the damaged Townhome Units are concerned, between and among each other and their holders of first mortgages or deeds of trust of record thereon, as set forth in the immediately preceding subpart hereof designated (2).

To the extent applicable, this is a covenant for the benefit of any holder of a first mortgage or deed of trust of record thereon, of a Townhome Unit Owner of a damaged Townhome Unit, and may be enforced by such holder of a first mortgage or deed of trust of record thereon. Anything herein to the contrary notwithstanding, unless at least 75% of the first mortgagees of record (based upon one vote for each mortgage) of Townhome Units have given their prior written approval, the Association shall not use casualty loss insurance proceeds received for losses to the Common Properties for other than the repair, replacement or reconstruction of such improvements. The Insurance Trustee may rely upon a certificate of the Association made by its President or any Vice President and the Secretary or any Assistant Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

(iii) If it is determined in the manner elsewhere provided by this Declaration that the damage for which the casualty loss proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in the following manner:

(1) If the damage for which the casualty loss proceeds are paid was limited solely to the Common Properties, then one hundred percent (100%) of such remaining proceeds shall be paid over to the Association.

(2) If the damage for which the casualty loss proceeds are paid was limited solely to Townhome Units, then one hundred percent (100%) of such remaining proceeds shall be paid over, jointly, to the Townhome Unit Owners of the damaged Townhome Units and their holders of first mortgages or deeds of trust of record thereon, pursuant to such formula as the Board of Directors of the Association shall determine, based upon the same proportion each to the other as the damage of each Townhome Unit bears to the damage of all Townhome Units damaged.

(3) If the damage for which the casualty loss proceeds are paid encompassed both the Common Properties and one or more Townhome Units, then one hundred percent (100%) of such remaining proceeds shall be paid over to the Association and jointly to the Townhome Unit Owners of the damaged Townhome Units and their holders of first mortgages or deeds of trust of record thereon, pursuant to such formula as the Board of Directors of the Association shall determine, based upon the same proportion each to the other as the damage to the Common Properties bears to the damage of all Townhome Units damaged and thereafter, insofar as the Townhome Unit Owners of the damaged Townhome Units are concerned, between and among each other and their holders of first mortgages or deeds of trust of record thereon, as set forth in the immediately preceding subpart hereof designated (2).

To the extent applicable, this is a covenant for the benefit of any holder of a first mortgage or deed of trust of record thereon, of a Townhome Unit Owner of a damaged Townhome Unit, and may be enforced by such first mortgagee or holder of a deed of trust of record thereon.

(iv) In making distribution to the Association and jointly to Townhome Unit Owners of damaged Townhome Units and their holders of first mortgages or deeds of trust of record thereon, the Insurance Trustee may rely upon a certificate of the Association made by its President or any Vice President and the Secretary or any Assistant Secretary as to the names of the Townhome Unit Owners, and the names of the holders of first mortgages or deeds of trust of record thereon, and their respective shares of the distribution.

(v) The Association, acting by its Board of Directors, is hereby irrevocably appointed agent for each Townhome Unit Owner, and for each holder of each first mortgage or deed of trust of record thereon, to adjust all claims arising under insurance policies purchased by the Association or by Townhome Unit Owners, hereinabove provided, if a master policy for fire and extended coverage insurance cannot be obtained and continually maintained for all of the Townhome Units, and to execute and deliver all releases upon the payment of claims.

(vi) All damage to Townhome Units and to improvements located upon the Common Properties owned by the Association shall be repaired, reconstructed, and rebuilt from the casualty loss proceeds of insurance collected by the Insurance Trustee, or from collections of assessments against Townhome Unit Owners of damaged Townhome Units and against all Townhome Unit Owners with respect to damage to the Common Properties, as set forth hereinafter 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 each class of the then Members and their holders of first mortgages or deeds of trust of record thereon, expressly providing that the damaged property is not to be reconstructed or repaired. The Insurance Trustee may rely upon a certificate of the Association made by its President or any Vice President and the Secretary or any Assistant Secretary that the damaged property is not to be reconstructed or repaired, if such certificate is accompanied by a recorded amendment to this Declaration with the required consents as set forth above.

(c) All reconstruction or repair must be substantially in accordance with the plans and specifications for the original Townhome Units and improvements located upon the Common Properties owned by the Association, and shall be subject to all of the approvals required by Article 7 hereof.

(d) The casualty loss proceeds of all insurance received by the Insurance Trustee and the sums deposited with the Insurance Trustee by the Association from collections of assessments against Townhome Unit Owners of damaged Townhome Units and against all Townhome Unit Owners with respect to damage to the Common Properties on account of such casualty not covered by insurance or from a deficiency in the amount of the casualty loss proceeds, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction or repair in the following manner and order:

(i) To the cost of reconstruction or repair of the damaged Townhome Units in the proportion which the damage of each Townhome Unit bears to the damage of all Townhome Units damaged.

(ii) To the cost of reconstruction or repair of the improvements located upon the Common Properties owned by the Association.

(iii) Any surplus to the extent the same is attributable to the said assessments remaining in the construction fund after such reconstruction or repairs is completed shall be distributed in the following manner:

(1) If the damage for which the casualty loss proceeds plus the assessments against Townhome Unit Owners was limited solely to the Common Properties, then one hundred percent (100%) of such surplus shall be paid over to all Townhome Unit Owners who had previously paid their assessments, pursuant to the same formula which the Board of Directors of the Association had previously utilized in levying the assessment, and distributed between and amongst them in the same proportion each to the other as the amount of each such Townhome Unit Owner's assessment bears to the total assessment made for this purpose.

(2) If the damage for which the casualty loss proceeds plus the assessments against the Townhome Unit Owners of damaged Townhome Units was limited solely to the Townhome Units, then one hundred percent (100%) of such surplus shall be paid over to all Townhome Unit Owners of damaged Townhome Units who had previously paid their assessments, pursuant to the same formula which the Board of Directors of the Association had previously utilized in levying the assessment and distributed between and among them in the same proportion each to the other as the amount of each such Townhome Unit Owner of a damaged Townhome Unit's assessment bears to the total assessment for this purpose.

(3) If the damage for which the casualty loss proceeds plus the assessments against Townhome Unit Owners encompassed both the Common Properties and one or more Units, then one hundred percent (100%) of such surplus shall be paid over to all Townhome Unit Owners who had previously paid their assessments in the following manner and amounts:

a. The Board of Directors of the Association shall determine, based upon the same proportion each to the other total surplus allocable to damage to the Common Properties and the portion of the total surplus allocable to damage to one or more Townhome Units.

b. Thereafter, insofar as all Townhome Unit Owners who had previously paid their assessments relating to damage to the Common Properties are concerned, between and among each other, as set forth in the immediately preceding subpart hereof designated (1).

c. Thereafter, insofar as all Townhome Unit Owners of damaged Townhome Units who had previously paid their assessments relating to damage to their respective Units are concerned, between and among each other, as set forth in the immediately preceding subpart hereof designated (2).

(e) The Board of Directors for and on behalf of the Association may employ an architect who shall be in charge of all reconstruction and repair of all improvements located on the Common Properties owned by the Association and by individual Townhome Unit Owners. Each request for disbursement of insurance proceeds and/or assessments, if any, for payment of reconstruction or repair shall include a certificate of the architect to the effect that all work then completed has been performed in accordance with plans and specifications approved as hereinabove required in Paragraph (c) of this Section 6.3 and all applicable building codes. A certificate of final completion shall be prepared and delivered to the Insurance Trustee when all such repair and reconstruction has been completed in accordance with said approved plans and specifications and all applicable building codes. Anything herein to the contrary notwithstanding, unless at least 75% of the first mortgagees of record (based upon one vote for each mortgage) of Townhome Units have given their prior written approval, the Association shall not use casualty loss insurance proceeds received for losses to the Common Properties for other than the repair, replacement or reconstruction of such improvements.

(f) All costs of reconstruction or repair in excess of insurance proceeds shall be paid by the Association from special assessments levied by the Association, without a vote of the Members, against the Townhome Units as hereinafter provided, which assessments shall be prorated equally against all Townhome Unit Owners with respect to damage to the Common Properties and prorated against all Townhome Unit Owners of damaged Townhome Units upon the same proportion each to the other as the damage of each Townhome Unit bears to the damage of all Townhome Units damaged. If such deficiency determinations are made by the Association, then a special assessment of assessments therefor must be levied either against all Townhome Unit Owners of damaged Townhome Units or against all Townhome Unit Owners with respect to damage to the Common Properties, or both, and the proceeds of such assessments added to the construction fund. Any such special assessment shall be due and payable at the time and in the manner provided by the Association. No such special assessment fund shall be distributed by the Insurance Trustee until all insurance proceeds have been distributed. If the Townhome Unit Owner of a damaged Townhome Unit shall fail to timely pay the assessment, no repair or reconstruction work shall be performed in that Townhome Unit except such work as shall be deemed by the Board of Directors to be necessary for the safety and protection of one or more other Townhome Unit Owners, until such share of the cost has been paid.

(g) Premiums upon all casualty insurance policies relating to the Townhome Units purchased by the Association pursuant to this Declaration, shall be separately assessed and prorated against each Townhome Unit under such formula as the Board of Directors of the Association shall determine, based upon the square footage or value of the Townhome Unit. Each Townhome Unit Owner shall pay such annual insurance premium assessment by prepayment of an estimated one-twelfth (1/12) of such annual insurance premiums upon all casualty insurance policies relating to the Townhome Units purchased by Townhome Unit Owners as hereinabove provided if a master policy for fire and extended coverage insurance cannot be obtained and continually maintained for all of the Townhome Units, shall be prepaid by each Townhome Unit Owner to the Insurance Trustee, monthly in an amount equal to one-twelfth (1/12) of the stated annual insurance premium for his individual policy or policies of fire and extended coverage insurance. (As Amended on January 21, 1985.)

(h) The Owner of any Townhome Unit may obtain additional insurance, at his own expense, including liability insurance to cover accidents or damage to persons or property occurring within his own individual Townhome Unit. Each individual Townhome Unit Owner shall also have the authority to purchase insurance upon his own personal property and additional improvements located within his individual Townhome Unit. Such insurance shall contain the same waiver of the right of subrogation endorsement set forth above applicable to insurance purchased by the Association, and, if obtainable, a "Severability of Interest" endorsement.

(i) The Board of Directors of the Association, at the request of any Townhome Unit Owner or mortgagee of record thereon, shall promptly obtain and forward to such Townhome Unit Owner, a mortgagee or trustee, a certificate showing the interest of such Townhome Unit Owner, mortgagee or trustee as it may appear, relating to insurance purchased by the Association pursuant to this Declaration. The Board of Directors of the Association may assess to the Townhome Unit Owner, a reasonable charge to reimburse the Association for the time and expense in securing such certificates.

(j) The Board of Directors of the Association shall use reasonable efforts to give written notice of substantial damage or destruction of any Townhome Unit or any part of the Common Properties to any mortgagee of record affected thereby if such mortgagee has given the Association its address to which such notices are to be mailed.

ARTICLE 7

PARTY WALLS

Section 7.1. General Rules of Law to Apply. Each foundation, wall, floor, column, roof or ceiling, which is built as a part of the original construction of the Townhome Units upon the Properties and placed on a dividing line between, or constituting the exterior of, or providing lateral support for Townhome Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts of omissions shall apply thereto. No Owner of a Townhome Unit shall cut through or make any penetration through a party wall for any purpose whatsoever.

Section 7.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to their respective use of same. As provided in Article 9, the Association, however, shall provide repair and maintenance of all fences and the exterior of Townhome Units, garages and/or carports, which are built as part of the original construction of the Townhome Units. Nothing shall be done by any Owner which impairs the structural integrity of any party wall or which diminishes the fire protection afforded by any party wall for any purpose which creates a hazard or nuisance for any other Owner who makes use of the party wall. (As Amended on _____.)

Section 7.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent that such destruction or damage is not covered by insurance and repaired out of the proceeds of same, the Owner of any Townhome Unit of which the party wall was or is a part shall contribute to the cost of restoration thereof as hereinabove provided in Section 6.3 (b) (vi) of Article 6 hereof; provided, however, the payment of any assessment thereunder shall be without prejudice to the right of any such Owner to institute any action or proceeding at law or in equity for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions. (As Amended on _____.)

Section 7.4. Weatherproofing. Notwithstanding any other provisions of this Declaration, 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 restoration thereof and of furnishing the necessary protection against such elements. (As Amended on _____.)

Section 7.5. Right to Contribution Runs With Land. The right of any Owner to contribution from any Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title. (As Amended on _____.)

Section 7.6. Encroachments. If any portion of a party wall shall encroach upon any adjoining Townhome Unit or Lot or upon the Common Properties, by reason of engineering errors, errors in original construction, reconstruction, settlement or shifting of any Townhome Unit, or otherwise, a valid easement for the encroachment and for the maintenance of the same as long as the Townhome Unit stands, shall exist. (As Amended on _____.)

ARTICLE 8

ARCHITECTURAL CONTROL

Section 8.1. Architectural and Environmental Control Committee. Except for original construction and/or development, and except for any improvements to any Townhome Unit or to the Common Properties accomplished concurrently with said construction and/or development, and except for the purposes of proper maintenance and repair, no building, fence, wall or other improvements or structures shall be commenced, directed, placed, moved, altered or maintained upon the Properties, nor shall any exterior addition to or change (including any change of color) or other alteration thereupon be made 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 an Architectural and Environmental Control Committee designated 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, aerials, 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 Townhome Unit or upon any of the Common Properties or to combine or otherwise join two or more Townhome Units, or to partition the same after combination, or to remove or alter any windows or exterior doors of any Townhome Unit, or to make any change or alteration within any Townhome Unit which will alter the structural integrity of the building or otherwise affect the property, interest or welfare of any other Townhome Unit Owner, materially increase the cost of operating or insuring any of the Common Properties 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 designated by the Board of Directors.

Section 8.2. Architectural and Environmental Control Committee - Operation. The Board of Directors shall be empowered to appoint an Architectural and Environmental Control Committee which shall consist of three (3) or more natural persons designated from time to time by the Board of Directors. At least one of said Committee members shall be a Director of the Association and shall also be the chairperson of said Committee. Such persons shall serve at the pleasure of the Board of Directors. The affirmative vote of a majority of the Committee and the approval of the Board of Directors shall be required in order to adopt or promulgate any rule or regulation, or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Article and the Declaration. In the event the Board

of Directors fails to appoint an Architectural and Environmental Control Committee, the Board of Directors shall constitute and be such Committee and shall exercise all rights, powers and authority herein granted to said Committee. (As Amended on March 12, 1992.)

Section 8.3. Approvals, etc. Upon approval of any plans and specifications as provided in this Article, a copy of such plans and specifications, as approved, shall be deposited among the permanent records of the Architectural and Environmental Control Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. In the event said Committee and the Board of Directors fail to approve or disapprove any plans and specifications which may be submitted pursuant to the provisions of this Article within sixty (60) days after such plans and specifications (and all other materials and information required by said Committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with. (As Amended on March 12, 1992.)

Section 8.4. Limitations. 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, as in Section 8.3 provided), 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. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Committee shall be conclusively deemed to have lapsed and 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.

Section 8.5. Certificate of Compliance. 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 Architectural and Environmental Control 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.

Section 8.6. Rules and Regulations, etc. The Architectural and Environmental Control Committee, with the approval of the Board of Directors, 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 decisions of the Architectural and Environmental Control Committee, as approved by the Board of Directors, shall be final, except that any Member who is aggrieved by any action or forbearance from action by the Committee (or by any policy, standards or guidelines established pursuant to this Article) shall have a right of appeal 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. (As Amended on March 12, 1992.)

ARTICLE 9

EXTERIOR MAINTENANCE

In addition to the routine repair, maintenance and care of the Common Properties and all recreational and other common facilities situated upon the Common Properties, the Association shall:

(a) Provide routine repair, maintenance and care (exclusive of repair of casualty damages and glass surfaces) of the exterior surfaces of the wall of each Townhome Unit (base to top) exposed to view and its garage or carport and/or maintenance as to water tightness (exclusive of repair of casualty damage) of the roof of each Townhome Unit and its garage and/or carport;

(b) Replace the roof of each Townhome Unit, garage and/or carport as determined necessary and approved by the Board of Directors of the Association;

(c) Paint the exterior of any improvements on the Common Properties and the exterior surfaces of the wall of each Townhome Unit (base to top) exposed to view and its garage and/or carport;

(d) Provide routine repair and/or replacement (as determined necessary and approved by the Board of Directors) of porch steps, porches, party and screen fences, patios, decks and balconies which were part of the original construction. Any additional costs which are incurred as a result of reconfiguration from original construction (as determined and approved by the Board of Directors) must be borne solely by the Townhome Owner requesting such replacement and will be paid to the Association by such Owner prior to work commencing.

The frequency and times, and the materials to be used in the performance of all maintenance shall be in the sole discretion of the Board of Directors of the Association and not subject to the control of any Owner.

In the event that the need for maintenance or repair to any Townhome Unit is caused through the willful or negligent act of an Owner, his family, guests, or invitees, the cost of such maintenance or repairs shall be added to and become an additional assessment, in addition to the annual/special assessments to which such Owner's Townhome Unit is subject and unless paid by or on behalf of said Owner within thirty(30) days after written demand therefor, shall be enforceable and secured by a lien as in the case of said annual/special assessments.

Each Townhome Unit Owner is fully responsible for termite and other insect control in and around their Unit(s), excluding fences. (Entire Article 9 Amended on _____)

ARTICLE 10

YARD MAINTENANCE

The Association shall provide routine maintenance and care of all yards, lawns and other areas of the Properties, including the mowing and watering thereof. The frequency and times, and the quantity of water and labor to be used, shall be in the sole discretion of the Board of Directors of the Association and not subject to the control of any Owner. Each Owner shall, however, be responsible for the maintenance of plantings and the like belonging to him, and not part of the Common Properties or original landscaping of the Townhome Units. In the event that the need for additional or extra maintenance, mowing, watering or the like is caused by or through the willful or negligent act of an Owner, his family, guests or invitees, the cost of such additional maintenance, utilities

or materials shall be added to and become an additional assessment, in addition to the annual/special assessments to which such Owner's Townhome Unit is subject and unless paid by or on behalf of said Owner within thirty (3) days after written demand therefor, shall be enforceable and secured by a lien as in the case of said annual assessments.

ARTICLE 11

USE RESTRICTIONS

Section 11.1. Prohibited Uses and Nuisances. Except for the activities of the Declarant during original construction and/or development, or except with the prior written approval of the Architectural and Environmental Control Committee or as may be necessary in connection with reasonable and necessary repairs or maintenance to any Townhome Unit or upon the Common Properties and all recreational and other common facilities:

- (a) All buildings or structures on the Properties shall be of new construction. No building or structure shall be moved onto said Townhome Units. Each Townhome Unit conveyed shall be designated by a separate legal description and shall constitute a fee simple estate subject to the terms, conditions and provisions hereof.
- (b) No noxious or offensive trade or activity shall be carried on upon or within any Townhome Unit nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other Owner, and the annoyance or nuisance shall be removed forthwith. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Townhome Unit or upon the exterior of any other improvements.
- (c) The maintenance, keeping, boarding and/or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any Townhome Unit or within any such Townhome Unit, except that this shall not prohibit the keeping of dogs, cats and/or caged birds as domestic pets provided they are not kept, bred or maintained for commercial purposes and, provided, further, that such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Owner's. The Board of Directors or, upon resolution of the Board of Directors, the Architectural and Environmental Control Committee shall have the authority, after hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Owners, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licenses and inoculated as may from time to time be required by law. Pets shall not be permitted upon the Common Properties unless accompanied by an adult and unless they are carried or leashed. The Board of Directors shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.
- (d) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste or trash of any other kind shall be permitted on any Townhome Unit.
- (e) Except as herein otherwise provided, and except automobiles and bikes, no junk vehicle, commercial vehicle, trailer, truck, camper, camp truck, house trailer, boat or other machinery or equipment of any kind or character (except for such equipment and/or machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Townhome Unit and except for such equipment and/or machinery as the Association may require in connection with the maintenance and operation of the Common Properties and all recreational and other common facilities) shall be kept upon the Properties nor (except for bona fide emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon. The Association may, in the discretion of the Architectural and Environmental Control Committee or its Board of

Directors, provide and maintain a suitable area designated for the parking of such vehicles or the like. No inoperable vehicle of any kind nor any vehicle without current safety inspection or license tags may be kept on any Townhome Unit, yard, driveway or street in front of any Townhome Unit at any time.

(f) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept and maintained upon any Townhome Unit. Garbage, trash and other refuse shall be placed in covered containers.

(g) No Townhome Unit shall be divided or subdivided without the prior written approval of the Board of Directors. The provisions of this subsection shall not apply to the Declarant and, further, the provisions hereof shall not be construed to prohibit the granting of any easement and/or right-of-way to any municipality, political subdivision, public utility or other public body or authority.

(h) Except for hoses and the like which are reasonably necessary in connection with normal lawn or plant maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone line, electrical line or cable, television cable or similar transmission line, or the like shall be installed or maintained on any Townhome Unit above the surface of the ground or beyond the exterior of such Townhome Unit.

(i) No Townhome Unit or Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

(j) No natural landscaping, or landscaping provided as part of the original development or subsequently by Declarant or the Association, shall be removed from any Townhome Unit or the Properties without written approval of the Association acting through the Architectural and Environmental Control Committee or duly appointed subcommittee. The Architectural and Environmental Control Committee may from time to time adopt and promulgate such additional rules and regulations regarding the preservation of trees and other natural resources and wildlife as it may consider appropriate.

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

(l) Except for entrance signs, directional signs for traffic control or safety, community "theme areas" and such promotional sign or signs as may be maintained by the Declarant or the Association, no signs, billboards, objects or advertising devices of any character shall be erected, posted, displayed or permitted to remain upon, in or about any Townhome Unit, including without limitation window signs. No awnings, canopy, or shutter shall be affixed to or placed upon an exterior wall or roof of a Townhome Unit.

(m) No structure, planting or other material shall be placed or permitted to remain on or about any Townhome Unit which may damage or interfere with any easement for the installment or maintenance of utilities, or which may unreasonably change, obstruct or retard direction or flow of any drainage channels.

(n) No Owner shall engage or direct any employee of the Association on any private business of the Owner during the hours such employee is employed by the Association, nor shall any Owner direct, supervise or in any manner attempt to assert control over any employee of the Association.

(o) All fixtures and equipment installed within a Townhome Unit, commencing at a point where the utility lines, pipes, wires, conduit or systems enter the exterior walls of the Townhome Units, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Townhome Unit or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect one or more of the other Townhome Units or their Owners.

(p) No vehicle shall be parked on streets or driveways so as to obstruct ingress and egress by Owners of Townhome Units, their families, guests and invitees except for the reasonable needs of emergency, construction, or service vehicles for as brief a period of time as reasonably possible. For a period not to exceed forty-eight (48) hours, family, guests, and invitees of Owners of Townhome Units may park their vehicles in the guest parking areas provided as part of the Common Properties. Guest parking areas are not intended for use by the Owners of Townhome 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.

(q) Except on individual patio area(s) contiguous to a Townhome Unit, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except as installed in accordance with the initial construction of the building or as approved by the Association's Board of Directors or their designated Architectural and Environmental Control Committee.

(r) (1) Every lease, rental or letting of a Townhome Unit shall be evidenced by a writing signed by the Owner (or authorized agent on the Owner's behalf) and the tenant, and shall be subject in all respects to this Declaration, the Articles of Incorporation and By-laws of the Association and all rules promulgated therein and pursuant thereto, and shall provide that any failure of the tenant to comply with said Declaration, Articles of Incorporation, By-Laws, and rules, shall be a default under such lease, rental or letting agreement. (As Amended on March 12, 1992.)

(2) Written notice of such lease, rental or letting delivered to the Association at its regular business office, shall be given by the Owner or Owner's agent immediately upon delivery of possession of the Townhome Unit to the tenant. Such notice shall include the name of all tenants, the street address of the Townhome Unit, and shall state whether or not the Owner has delegated his rights to the use and enjoyment of the Common Properties to the tenant. (As Amended on March 12, 1992.)

(s) Immediately upon the transfer of ownership of any Townhome Unit, whether by sale, gift, inheritance, foreclosure or otherwise, the new Owner thereof shall give notice in writing, delivered to the Association at its regular business office, indicating the fact of such transfer, the legal description of the Townhome Unit and its street address, the date on which said transfer was made and the name and post office address of the new Owner. (As Amended on March 12, 1992.)

(t) The covenants of this Article 11 shall not apply to the activities of the Barrybrooke Village & Racquet Club Association, a not-for-profit corporation incorporated or to be incorporated under the laws of the State of Missouri, or to Declarant. Declarant may maintain, while constructing and selling the Townhome 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.

Section 11.2. Residential Use. All Townhome Units shall be used for private residential purposes exclusively by a natural family, or by not more than four unrelated natural persons. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit the Declarant from the use of any Townhome Unit or the Common Properties for promotional or display purposes, as a sales office, or as "model Homes" or for other purposes related to the construction and development of "Barrybrooke Village & Racquet Club."

Section 11.3. Enforcement - Right to Remove or Correct Violations. In the event any violation or attempted violation of any of the covenants or restrictions contained in this Article 11 or in Article 7, Article 8, Article 9, Article 10 and Article 12 hereof shall occur or be maintained upon any Townhome Unit, or in the event of any other conduct in violation of any of the provisions and requirements of this Article 11 or of Article 7, Article 8, Article 9, Article 10 and Article 12 hereof, as the case may be, then the same shall be considered to have been undertaken in violation of this Article 11 or of Article 7, Article 8, Article 9, Article 10 and Article 12 hereof, as the case may be, and without the approval of the Architectural and Environment Control Committee or Board of

Directors as required herein, and, upon written notice either from the Architectural and Environmental Control Committee or from the Association, such violation shall be promptly removed or abated. In the event the same is not removed, or the violation is not otherwise terminated or abated, within fifteen (15) days (or such shorter period as may be required in any such notice) after notice of such violation is delivered to the Owner of the Townhome Unit upon which such violation exists, or to the Member responsible for such violation if the same shall be committed or attempted on premises other than the Townhome Unit owned by such Member, then the Association shall have the right, through its agents and employees (but only after a resolution of the Architectural and Environmental Control Committee or the Board of Directors) to enter upon such Townhome Unit and to take such steps as may be necessary to remove or otherwise terminate or abate such violation and the cost thereof may be assessed against the Townhome Unit upon such violation occurred and, when so assessed, a statement for the amount thereof shall be rendered to the Owner of said Townhome Unit at which time the assessment shall become due and payable and a continuing lien upon such Townhome Unit and a bonding personal obligation of the Owner of such Townhome Unit, in all respects (and subject to the same limitations) as provided in Article 5 of this Declaration. The Association shall have the further right, through its agents, employees or committees, to enter upon and inspect any Townhome Unit at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this Article 11 or any of the other provisions or requirements of this Declaration, exist on such Townhome Unit; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Each and every provision hereof shall be deemed an equitable servitude running with the land and may be specifically enforced. Nothing herein shall be deemed to limit any remedies available to the Association, and the Association may avail itself of any other remedy, at law or in equity, as may be available from time to time.

Section 11.4. House Rules, etc. There shall be no violation of any rules for the use of the Common Properties and all recreational and other common facilities or "house rules" or other community rules and regulations not inconsistent with the provisions of this Declaration which may from time to time be adopted by the Board of Directors of the Association and promulgated among the membership by them in writing, and the Board of Directors is hereby and elsewhere in this Declaration authorized to adopt such rules.

ARTICLE 12

EASEMENTS

Section 12.1. Utility Easements. Declarant will install or cause to be installed lines, pipes, conduits, meters and other utility facilities referred to as "utility lines", for the purpose of providing such sewer, electricity, gas, water, and telephone services to the individual Townhome Units. To insure that such utility lines shall be kept, maintained, restored, repaired and replaced, Declarant hereby grants to the Association, its successors and assigns, and to the City of Kansas City, Missouri, and to any and all public utilities, for the benefit of the Townhome Unit Owners, the following permanent rights, licenses and easements:

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

(b) If, in order to maintain, restore, repair or replace the utility line that serves any one Townhome Unit, it becomes necessary to break through walls, excavate or otherwise damage a Townhome Unit, the Common Properties, or the Properties entered, the damages caused by such entry shall be repaired and the Townhome Unit substantially the same condition as prior to such damage as a common expense of the Association payable out of

the annual assessment. Expenses applicable to removal of obstructions in a sewer line from the exterior to any portion of a Townhome Unit, however, shall be assumed and paid by the Owner of such Townhome Unit and shall not be a common expense payable by the Association out of the annual assessment.

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

Section 12.2. Easements for Minor Encroachments. Each Townhome Unit and all improvements constructed upon the Common Properties shall be subject to an easement created by the original construction of any overhang of the structures built by Declarant. A valid easement for said encroachment and for the maintenance of same, so long as they stand, shall and does exist. In the event any such improvements are partially or totally destroyed and then rebuilt, the Association and the Owners of each Townhome Unit agree that valid easements shall exist for any encroachment resulting therefrom.

Section 12.3. Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the Properties for ingress and egress, installation, operation, replacing, repairing and maintaining utilities, including but not limited to water, sewer, telephone, television, CATV cables, electricity, gas and for drainage facilities and floodway purposes, together with the right to remove any obstruction that may be placed in such easement area that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utilities, drainage facilities and floodway courses. By virtue of this easement, it shall be expressly permissible for the utility companies and/or Declarant to affix and maintain pipes, wires, conduits or other service lines on, above, across and under the roofs, floors, ceilings and exterior walls of the Townhome Units. Notwithstanding anything to the contrary contained in this paragraph, or in this Declaration, no sewer, electrical lines, water line or other utilities may be installed or relocated upon the Common Properties, the Properties, or the Townhome Units until approved by Declarant so long as Declarant owns any of the Properties and thereafter by the Board of Directors of the Association. Neither Declarant nor any utility company or other authorized entity using the easements shall be liable for any damage done by them, their employees or agents, to shrubbery, trees, flowers or other improvements located on the land covered by said easements. The Owners of the respective Townhome Units shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property, which are utilized for or serve other Townhome Units, but each Owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of their Townhome Unit. It shall be the obligation of the Association to maintain all sewer lines and facilities from the exterior of the Townhome Units to the city sewer main, such lines to be located within such easement areas. All expenses for such maintenance shall be a common expense to be paid by the Association out of the annual assessments pursuant to this Declaration.

Section 12.4. Easement for Ingress and Egress. Declarant hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, for the benefit of each Townhome Unit Owner, an easement for ingress and egress to each Townhome Unit over and across all of the Common Properties and all recreational and other common facilities.

Section 12.5. Association Easement. Declarant hereby establishes and reserves to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, an easement over, under and across all of the Properties and the Common Properties subject to this Declaration, for the benefit of each Townhome Unit Owner, for the purposes of executing any of the powers, rights or duties granted to or imposed upon the Association by the terms of this Declaration, or the Articles of Incorporation and By-Laws of the Association.

ARTICLE 13

GENERAL PROVISIONS

Section 13.1. Duration. Unless amended in accordance with the provisions of this Article and the other requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, the Covenants, Conditions and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by Barrybrooke Village & Racquet Club Association, or the Owner of any Townhome Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date that this Declaration is recorded, after which time the said Covenants, Conditions and Restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Townhome Units has been recorded, agreeing to abolish said Covenants, Conditions and Restrictions or to change said Covenants, Conditions and Restrictions in whole or in part; provided, however, that no such agreements to change shall be effective unless made and recorded one (1) year in advance of the effective date of such change; provided, further, that no such agreements to change shall be applicable to existing buildings on the Properties.

Section 13.2. Amendment by Declarant. Until such time as the first Townhome Unit is sold by Declarant, Declarant, at its sole discretion, may abolish said Covenants, Conditions and Restrictions or change them in whole or in part.

Section 13.3. Amendment by Owners. Except as provided in this Article and in Section 12.1 and Section 12.2, and in Paragraph (b) (vi) of Section 6.3 hereof, the Covenants, Conditions and Restrictions of this Declaration may be abolished, amended and/or changed, in whole or in part, only with the consent of two-thirds (2/3) of the Members of the Association, evidenced by a document bearing each of their signatures. (This Section Amended on March 12, 1992.) (Amendments to this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS have been approved by the Membership on July 19, 1982; January 21, 1985; March 12, 1992 and _____.)

Section 13.4. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the community of "Barrybrooke Village & Racquet Club." Enforcement of these covenants, conditions and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction, either to restrain or enjoin violation or to recover damages, or both, and against any Townhome Unit to enforce the lien created hereby; and the failure or forbearance by the Association or the Owner of any Townhome Unit to enforce any covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The provisions hereof may be enforced, without limitation, by the Association, or by any other person, firm, corporation or other legal entity who has any right to the use of any of the Common Properties and all recreational and other common facilities owned by the Association, including, again without limitation, any person, firm corporation or other legal entity who has any right to the use of any of the streets or roadways owned by the Association.

There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants, conditions or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

Section 13.5. 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/special 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 Properties 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 Properties 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 Properties 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 government authority.

Section 13.6. Rights of Mortgagees. The holder of the first mortgages or deeds of trust of record on any Townhome Unit or Units may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any of the Common Properties and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such property, and the holders of the first mortgages or deeds of trust of record on any Townhome Unit or Townhome Units making such payments shall be owed immediate reimbursement therefor from the Association. The Association shall enter into a written agreement with one or more holders of first mortgages or deeds of trust of record on Townhome Units confirming entitlement to such reimbursement in favor of all holders of first mortgages or deeds of trust of record on Townhome Units. Anything herein to the contrary notwithstanding, no provision of this Declaration or any amendment thereto, of the Articles of Incorporation and By-Laws of the Association, or of any Similar instrument pertaining to "Barrybrooke Village & Racquet Club" or to the Townhome Units in "Barrybrooke Village & Racquet Club" shall give a Townhome Unit Owner or any other party priority over any rights of holders of first mortgages or deeds of trust of record on Townhome Units pursuant to their mortgages or deeds of trust in the case of a distribution to Townhome Unit Owners of casualty loss insurance proceeds or condemnation awards for losses to or a taking of Common Properties or Townhome Units and Lots. The holders of all such first mortgages or deeds of trust of record jointly and severally shall have the right to inspect the books and records of the Association at anytime during normal business hours, and, subject to the provisions of Section 13.10 hereof, (i) shall have the right to receive all financial statements generally made available to Owners, (ii) shall have the right to receive written notice of all meetings of the Association and to designate a representative to attend all such meetings, and (iii) shall have the right to receive annual audited financial statements of the Association within 90 days following the end of each fiscal year.

Section 13.7. Voting. Subject to the By-Laws of the Association, whenever in this Declaration, any action is required to be taken by specified percentage of "each class of the then Members" of the Association, then such action shall be required to be taken separately by the specified percentage of the then outstanding Class B Members of the Association. Subject to the By-Laws of the Association, whenever in this Declaration any action is required to be taken by a specified percentage of the "then Members" of the Association, then such action shall be required to be taken by the specified percentage of the then outstanding cumulative membership of the Association present and voting, in person or by proxy.

Section 13.8. 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.

Section 13.9. Incorporation by Reference on Resale. In the event any Owner sells or otherwise transfer any Townhome 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 Townhome Unit.

Section 13.10. Notification of Sale of Lot. Concurrently with the consummation of the sale of any Townhome Unit and Lot under circumstances whereby the Transferee becomes an Owner thereof or within five (5) business days thereafter, the transferee shall notify the Association in writing of such sale. Such notification shall set forth, (i) the name of the transferee and his transferor, (ii) the street address of the Townhome Unit and Lot purchased by the transferee, (iii) the transferee's mailing address, and (iv) the date of sale. Prior to receipt of such notification, any and all communications required or permitted to be given by the Association, its Board of Directors, or the Architectural and Environmental Control Committee shall be deemed to be duly made and given to the transferee if duly and timely made and given to said transferee's transferor.

Section 13.11. Notification as to Mortgagees. Each Owner shall notify the Board of Directors through the Secretary of the Association of the name and address of the mortgagee of such Owner's Townhome Unit and Lot. Each Owner shall likewise notify the Board of Directors through the Secretary of the Association as to the release or discharge of any such mortgages. In addition, the mortgagee of a Townhome Unit and Lot may notify the Board of Directors through the Secretary of the Association of such mortgagee's identity and address and a description of the Townhome Unit and Lot which such mortgagee's mortgage encumbers. The Board of Directors shall maintain a record of the names and addresses of such mortgagees and to which it receives notice pursuant to the provisions hereof and shall provide all such mortgagees as to which it receives notice pursuant to the provisions hereof with written notifications as follows:

- (a) Written notification of at least ninety (90) days prior to the abandonment or termination of the Declaration or the Association;
- (b) Written notification of at least thirty (30) days prior to the effective date of any material amendment to any of the substantive provisions of the Declaration, or the Articles of Incorporation and/or By-Laws of the Association;
- (c) Written notification of at least (10) days prior to the date of any meetings of the Association, together with the right in such mortgagee to designate a representative to attend all such meetings;
- (d) Written notification of at least thirty (30) days prior to the effective date of the termination of professional management and assumption of self-management of the affairs of the Association and/or for the operation and/or care and maintenance of the Common Properties all recreational and other common facilities therein, and all other property and improvements as herein set forth to be the responsibility of the Association;
- (e) Timely written notice of any condemnation or eminent domain proceeding affecting any Townhome Unit and Lot, or the Common Properties or any part thereof.

Section 13.12. Consents.

(a) Except as hereinafter provided, the Association shall not by any act or omission, encumber, partition, mortgage or sell, transfer, abandon, or otherwise dispose of any of the Common Properties or facilities of the Association without the consent of two-thirds (2/3) of the Members of the Association, evidenced by a document bearing each of their signatures. (As Amended on March 12, 1992.)

(b) Notwithstanding the provisions of this Article, and any other parts of the Declaration in conflict herewith, the Board of Directors of the Association may extricate from the Common Area the north one-third (1/3) of Lot B, BARRYBROOKE VILLAGE FIRST PLAT, for the sole purpose of providing for the development thereof in conformity with the original intention of the developer, Rolls Development Company, by arranging for the erection thereon of a structure containing Townhome Units as originally planned, built in conformity with the existing exterior design features of the Townhome Units originally constructed on said Plat, and pursuant to said authority

may sell, lease or mortgage said parcel as may be appropriate and provided further, that the Owner of each new Townhome Unit therein shall be a Member of the Association with the same rights, privileges and obligations as all other Members of the the same class. (As Amended on March 12, 1992.)

Section 13.13. 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, or either, as may be required or permitted by the applicable provisions of Missouri Law. 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 Missouri law applicable to non-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Missouri law shall control.

Section 13.14. Definition. As used in this Article, the term "Mortgagee" shall mean any first mortgagee or holder of a first deed of trust lien on a Townhome Unit subject to this Declaration and shall not be limited to the institutional mortgagees, and the term "mortgage" shall include a Deed of Trust. As used generally in this Declaration, the term "institutional holder" or "institutional mortgagee" shall include banks, trust companies, insurance companies, credit unions, mortgage insurance companies, savings and loan associations, pension funds, real estate investment trusts, mortgage companies, the Declarant, FNMA, FHLMC, and any corporation, including a corporation of, or affiliated with the United States Government, or any agency thereof.

Section 13.15. Personal Liability. No Member of the Board or any Committee of the Association, or Declarant, or any officer of the Association, or the Manager, if any, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of the Association, the Board, the Manager, if any, or any other representative or employee of the Association, the Declarant, or the Architectural and Environmental Control Committee, or any other Committee, or any officer of the Association, or the Declarant, provided that such person has, upon the basis of such information as then may be possessed by him, acted in good faith without willful or intentional misconduct.

Section 13.16. No Dedication to Public Use. Nothing herein contained shall be construed as a dedication to public use or as an acceptance for maintenance of any of the Common Properties and all recreational and other common facilities by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any said Common Properties and all recreational and other common facilities.

Section 13.17. Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 13.18. Notices. All notices required to be given hereunder shall be deemed to have been properly sent when deposited with the United State Postal Service, ordinary mail, postage prepaid, addressed to the Owner at the street address assigned to his Townhome Unit by the governing body of the City of Kansas City, Missouri, or its delegate or addressed to Declarant at 1000 Power & Light building, Kansas City, Missouri 64105 (or at such other address as Declarant may designate from time to time to the Owners), provided however, said notice may be delivered by any other means.

Section 13.19. Severability. Invalidation of any one or more of these covenants, conditions or restrictions by judgment, decree or court order shall in no wise affect any other provisions hereof, each of which shall remain in full force and effect.

Section 13.20. 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.

Section 13.21. Special Amendments: The Association reserves the right and power to record a special amendment ("Special Amendment") to this Declaration at any time and from time to time (i) to comply with the requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Townhome Units. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted the Association to make or consent to a Special Amendment on behalf of each Owner. Each deed, mortgage or deed of trust, other evidence of obligation, or other instrument affecting a Townhome Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of the Association to make, execute and record Special Amendments. No Special Amendment made by the Association shall affect or impair the lien of any first mortgage upon a Townhome Unit or any warranties made by an Owner in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage of such Owner's Townhome Unit. (Special Amendment No.1 was filed on September 20, 1976 subjecting all the immediately aforesaid land and additionally certain of the land heretofore platted as BARRYBROOKE VILLAGE, FIRST PLAT, to the provisions of this Declaration. This was accomplished by a Supplementary Declaration to the original Declarations on July 19, 1982 - See EXHIBIT A.)

EXHIBIT A

All of BARRYBROOKE VILLAGE, SECOND PLAT, a subdivision in Kansas City, Platte County, Missouri, according to the recorded plat thereof, except that part of Lot F lying West of the West line of Lot D, and the West line of Lot B and the Northerly prolongation thereof.

All of Lots C and D, BARRYBROOKE VILLAGE, FIRST PLAT, A SUBDIVISION in Kansas City, Platte County, Missouri, according to the recorded plat thereof, and that part of Lot B, BARRYBROOKE VILLAGE, FIRST PLAT, a subdivision in Kansas City, Platte County, Missouri, according to the recorded plat thereof, described as beginning at the southwesterly most corner of said Lot B; thence south 86° 16 min. 35 sec. east along the south line of said Lot B a distance of 170 feet; thence north 03° 43 min. 25 sec. east a distance of 95.00 feet; thence north 48° 43 min. 25 sec. east a distance of 45.00 feet; thence north 18° 51 min. 06 sec. west a distance of 205 feet; thence south 70° 02 min. 49 sec. west a distance of 130.78 feet to a point on the west line of said Lot B; thence south 04° 27 min. west along the west line of said Lot B, a distance of 263.62 feet to the point of beginning. (As Amended on September 20, 1976 and included in Supplementary Declaration entered into with the undersigned Owners on July 19, 1982.)