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THIRD AMENDMENT AND SUPPLEMENT TO  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
INDIAN CREEK WOODS TOWNHOME ASSOCIATION I

STATE OF KANSAS  
COUNTY OF JOHNSON  
FILED FOR RECORD

1986 APR 18 P 3:17.5

RUSIE M. SCOTT  
REGISTER OF DEEDS

BY \_\_\_\_\_ DFP  
The Declaration of Covenants, Conditions and Restrictions for Indian Creek Woods Townhomes Association I ("Declaration"), recorded on December 26, 1978, in Volume 1417, at Pages 627 through 652, in the Office of the Register of Deeds of Johnson County, Kansas, and amended in amendments at Book 1614, at Page 805 and Book 1737, at Page 275 in the Office of the Register of Deeds of Johnson County, Kansas, is hereby amended and supplemented in accordance with Sections 9.01 through 9.04, inclusive, of Article Nine, and Section 10.03 of Article Ten of the Declaration so the entire Declaration shall read as follows:

RECITALS:

Indian Creek Woods Townhome Association I ("Residential Associates" or "Association") is or will be the holder of record title to the real estate described in attached and hereby incorporated EXHIBIT A hereto (the "Property"), which comprises a part of Tract F of Indian Creek Village Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas.

Each Owner of a Lot which is subject to this Declaration shall be a member of the Residential Association established hereunder. The Residential Association shall be the primary collecting agent of all charges and assessments due under this Declaration.

The Residential Association shall be responsible for the administration, maintenance, repair, and replacement of Dwelling Unit Exteriors, Garage Exteriors and Common Areas, and each Owner of a Lot which is subject to this Declaration shall be assessed for his share of the cost thereof by the Residential Association based on the Assessable Area of his Dwelling Unit. The Residential Association shall have no responsibility for the maintenance of the Common Areas described in the Umbrella Declaration, except as expressly stated herein.

NOW, THEREFORE, Residential Association, for the purposes herein stated, declare and grant as follows:

ARTICLE ONE

Definitions

For the purposes of brevity and clarity, certain words and terms used in this Declaration are defined as follows:

1.01 ASSESSABLE AREA: The square footage of the living area of each Dwelling Unit, excluding garages, shall be conclusively presumed to be equal to the Assessable Area with respect to each Lot as set forth in EXHIBIT B to this Declaration.

1.02 ASSOCIATION: Residential Association.

1.03 BOARD: The board of directors of the Residential Association, as constituted at any time or from time to time, in accordance with the applicable provisions of Article Four of this Declaration.

1.04 BY-LAWS: The By-Laws of the Residential Association.

1.05 COMMON AREA: Those portions of the Premises which are described and designated as "Common Area" in EXHIBIT A hereto, as EXHIBIT A may be amended or supplemented from time to time, together with all improvements thereon and rights appurtenant thereto. The Common Area shall generally include open space, swimming pool facilities, entrance area improvements, patios, patio sheds, landscaping, streets, walks, and green areas. The Common Area shall not include any Dwelling Units or Garages comprising the Lots. Common Area may be removed from the provisions of this Declaration only by condemnation or any amendment in compliance with Section 10.03.

1.06 COMMON EXPENSES: The expenses of administration (including management and professional services), maintenance, operation, repair, replacement, the cost of insurance, real estate taxes and assessments, water, electricity, telephone and other utility expenses, waste removal, landscaping and snow removal of the Dwelling Unit Exteriors, Garage Exteriors, Common Areas or personal property in the Common Areas; if not separately metered or charged, the cost of water, waste removal and other necessary utility services to the Dwelling Units, the Garages and Common Areas, any expenses designated as Common Expenses by this Declaration or the By-Laws; and any other expenses lawfully incurred by the Residential Association for the common benefit of all of the Owners.

1.07 DECLARATION: This instrument with all Exhibits hereto, as amended or supplemented from time to time.

1.08 DECLARANT: Indian Creek Wood Townhome Association I, a Kansas corporation, its successors and assigns.

1.09 DEVELOPER: Thorington Corporation, a Kansas corporation, its successors and assigns.

1.10 DEVELOPMENT AREA: Tract F of Indian Creek Village Second Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, with all improvements thereon and rights appurtenant thereto. The Development Area is herein described for informational purposes only and no covenants, conditions, restrictions, easements, liens or charges shall attach to any part of the Development Area by reason of this Declaration, except to the extent that portions thereof are described in EXHIBIT C and expressly made subject to the provisions of this Declaration as part of the Premises. Any portions of the Development area which are not made subject to the provisions of this Declaration as part of the Premises may be developed and used for any purposes not prohibited by law including, without limitation, residential development, or as a shopping center, or other commercial development.

1.11 DWELLING UNIT: A part of the Premises and its improvements which is designated as a Dwelling Unit in EXHIBIT B to this Declaration. Each Dwelling Unit shall be identified on a recorded certificate of survey by a distinguishing number or other symbol.

1.12 DWELLING UNIT EXTERIOR: The roof, foundation, steps, footings, and outer surface of exterior walls of the residence located on the Dwelling Unit and all portions of the Dwelling Unit which are not improved with the residence including, without limitation: driveways, walkways, patios, patio sheds, shrubbery, privacy screens, grass, and other landscaping, directly serving only the Dwelling Unit; and those portions of water, sewer, electric and other operating or utility systems which serve more than one Dwelling Unit, but excluding those portions of such systems which serve only the residence located on the Dwelling Unit.

1.13 GARAGE: A part of the Premises and its improvements which is designated as a Garage in EXHIBIT B to the Declaration. Each Garage shall be identified on a recorded certificate of survey by a distinguishing number or symbol and used as a garage for automobiles and for storage purposes.

1.14 GARAGE EXTERIOR: The roof, foundation, steps, footings, garage doors and outer surface of exterior walls of each Garage structure and all parts of a Garage which are not improved with such a structure including, without limitation: driveways, walkways, grass, shrubbery and other landscaping directly serving only the Garage; and those portions of any operating or utility systems which serve more than one Garage, but excluding those portions of such systems which serve only the Garage structure.

1.15 LOT: A part of the Premises consisting of a Dwelling Unit and its related Garage.

1.16 OWNER: A record owner, whether one or more persons, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The Developer shall be deemed to be an Owner with respect to each Lot owned by the Developer. In the event record ownership of a Dwelling Unit should become separated from that of the Garage with which it initially comprised a Lot, thereafter the term "Owner" (or "Mortgagee", as the case may be) of such Lot shall refer only to the record owner of that Dwelling Unit which initially was included within the definition of such Lot.

1.17 PREMISES: That portion of the Development Area which is described in EXHIBIT C to this Declaration, as EXHIBIT C may be amended from time to time, with all improvements thereon and rights appurtenant thereto.

1.18 RECORD: To record or file for record with the Register of Deeds of Johnson County, Kansas.

1.19 RESIDENT: An Owner or Owner's tenant.

1.20 RESIDENTIAL ASSOCIATION: Indian Creek Woods Townhome Association I, a Kansas not-for-profit corporation, its successors and assigns.

1.21 VOTING MEMBER: The individual who enjoys membership in the Residential Association attributable to a Dwelling Unit, as more fully set forth in Section 4.03, and who (after the Turnover Date) shall be entitled to vote at meetings of the Owners.

## ARTICLE TWO

### Scope of Declaration and Certain Property Rights

2.01 PROPERTY SUBJECT TO DECLARATION: Residential Association expressly intends to and, by Recording this Declaration, does hereby subject the Premises to the provisions of this Declaration.

2.02 CONVEYANCES SUBJECT TO DECLARATION: All easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits, and privileges which are granted, created, reserved or declared by this Declaration shall be deemed to be covenants appurtenant, running with the land and shall at all times inure to the benefit of and be binding on any Person having at any time any interest or estate in the Premises, and their respective heirs, successors, personal representatives or assigns. Reference in any deed of conveyance, lease, mortgage, trust deed, other evidence of obligation, or other instrument to



the provisions of this Declaration shall be sufficient to create and reserve all of the easements, restrictions, conditions, covenants, reservations, liens, charges, rights, benefits and privileges which are granted, created, reserved, or declared by this Declaration, as fully and completely as though they were set forth in their entirety in any such document.

2.03 ASSOCIATION RIGHT OF INGRESS AND EGRESS: The employees and agents of the Residential Association shall have the right of ingress and egress over and upon the Dwelling Unit Exteriors, Garage Exteriors and Common Areas for all purposes connected with the administration, repair, replacement, maintenance, construction, reconstruction, improvement, added planting, replanting, landscaping, snow removal, and any other duties or powers of the Residential Association under this Declaration with respect to the Dwelling Units or Garages and Common Areas.

2.04 EASEMENT FOR UNINTENTIONAL ENCROACHMENT: Notwithstanding any other provisions contained herein, in the event that the improvements to any Dwelling Unit, Garage, or Common Area or Facilities serving the same, encroaches upon any other Garage or other Dwelling Unit where such encroachment results from the design, construction, reconstruction, or shifting of any such improvements, then a perpetual easement appurtenant to such Dwelling Unit shall exist for the continuance of any such encroachment on such other Dwelling Unit.

2.05 LEASE OF DWELLING UNIT: Any Owner shall have the right to lease his Dwelling Unit and/or Garage upon such terms as the Owner may deem advisable, except, that, any such lease shall be in writing and shall provide that the lease shall be subject to the terms of this Declaration and that any failure of the lessee to comply with the terms of this Declaration shall be a default under the lease.

### ARTICLE THREE

#### Use and Maintenance Covenants and Restrictions

3.01 MAINTENANCE OF DWELLING UNITS AND GARAGES: Except as otherwise provided in this Section, each Owner shall be responsible for the maintenance, repair and replacement of his Dwelling Unit and of the Garage which comprise his Lot. Subject to the provisions of this Declaration, the Residential Association shall be responsible for the maintenance, repair of the Dwelling Unit Exteriors and Garage Exteriors, including, without limitation, the following:

(a) maintenance, repair and replacement of the roof, patio sheds, outer surface of exterior walls, foundations, steps, footings, walls, driveways, walkways, and patios located in the Dwelling Unit Exteriors and Garage Exteriors, excluding any replacement of broken glass and excluding repair of damage to Garage doors;

(b) added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping of the Dwelling Unit Exteriors or Garage Exteriors.

(c) maintenance, repair and replacement of water, sewer, electrical and other systems which serve more than one Dwelling Unit or more than one Garage Unit (but not including those portions of such systems which serve only one Dwelling Unit or only one Garage Unit, such as a Garage door opener, air conditioning unit, and electrical or plumbing fixtures).

**3.02 ADDITIONS, ALTERATIONS OR IMPROVEMENTS:** No additions, alterations or improvements shall be made to any Dwelling Unit Exteriors or Garage Exteriors by an Owner without prior written consent of the Board. The Board may (but shall not be required to) condition its consent to the making of an addition, alteration or improvement to a Dwelling Unit Exterior or Garage Exterior by Owner upon the Owner's agreement either (i) to be solely responsible for the maintenance of such addition, alteration or improvement, subject to such standards as the Board may from time to time set, or (ii) to pay to the Residential Association from time to time the additional cost of maintenance of the Dwelling Unit Exterior or Garage Exterior as a result of the addition, alteration or improvement. If an addition, alteration or improvement is made to a Dwelling Unit Exterior or Garage Exterior by an Owner without the prior written consent of the Board, then the Board may, in its discretion, take any of the following actions:

(a) Require the Owner to remove the addition, alteration or improvement and restore the Dwelling Unit or Garage to its original condition, all at the Owner's expense; or

(b) If the Owner refuses or fails to properly perform the work required under (a), the Board may cause such work to be done and may charge the Owner for the cost thereof as determined by the Board; or

(c) Ratify the action taken by the Owner, and the Board may (but shall not be required to) condition such ratification upon the same conditions which it may impose upon the giving of its prior consent under this Section.

**3.03 DAMAGE CAUSED BY OWNER:** If, due to the act of or the neglect of an Owner, or a member of his family or household pet or of a guest or other authorized occupant or invitee of such

Owner, damage shall be caused to a part of the Premises and maintenance, repairs or replacements shall be required which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs, and replacements, as may be determined by the Board, to the extent not covered by insurance, if any, carried by the Residential Association.

3.04 RESIDENTIAL USE ONLY: Except as provided in Section 2.04 or as permitted by rules and regulations adopted by the Board, each Dwelling Unit shall be used only as a residence for a family, each Garage Unit shall be used only for parking an automobile and for approved storage purposes, and no industry, business, trade, occupation or profession of any kind shall be conducted, maintained or permitted on any part of the Premises.

3.05 NO SIGN: Except as permitted by the Board, no "For Sale", "For Rent" or other solicitation or advertising sign or window display shall be maintained or permitted on the Premises.

3.06 PETS: No pet shall be kept in any Garage. The Board may from time to time adopt rules and regulations governing the keeping of pets in the Dwelling Units. Such rules and regulations may prohibit certain species of pets from being kept in the Dwelling Units. Any pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from a Dwelling Unit upon three (3) days' written notice from the Board to the Owner of the Dwelling Unit containing such pet, and the decision of the Board shall be final.

3.07 STRUCTURAL IMPAIRMENT: Nothing shall be done in, on or to any part of the Premises which would impair the structural integrity of any building or structure located on the Premises.

3.08 PROSCRIBED ACTIVITIES: No noxious or offensive activity shall be carried on in the Premises and nothing shall be done in the Premises, either willfully or negligently, which may be or become an annoyance or nuisance to the Owners or occupants of the Dwelling Units.

3.09 NO UNSIGHTLY USES: No clothes, sheets, blankets, laundry of any kind, or other similar articles shall be hung out on any portion of a Dwelling Unit Exterior or Garage Exterior. The Premises shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Board.

3.10 RULES AND REGULATIONS: The use and enjoyment of the Dwelling Units and Garages shall be subject to reasonable rules and regulations duly adopted by the Board from time to time; provided that no rule or regulation shall be effective unless and until at least ten (10) days notice thereof is given to all Owners.

3.11 OWNERSHIP: The Association shall obtain and then have ownership of the Common Area and shall be responsible for the payment of any and all Common Expenses in connection with the Common Area or Additional Common Areas including, without limitation, all currently due general and special real estate taxes and assessments and all property damage and public liability insurance premiums, regardless of when the Umbrella Association shall have conveyed the Common Area or Additional Common Area to the Association.

3.12 ACCESS EASEMENT: Every Owner shall have a non-exclusive perpetual easement for ingress and egress from his Dwelling Unit and Garage to public streets and roads over and across the Common Area, which easement shall run with the land, be appurtenant to and pass with the title to every Lot.

3.13 RIGHT OF ENJOYMENT: Each Owner shall have the non-exclusive right and easement to use and enjoy the Common Area. Such rights and easements shall run with the land, be appurtenant to and pass with title to every Lot, subject to and governed by the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association. Any persons other than Owners may use and enjoy facilities located on the Common Area only to the extent permitted under rules and regulations adopted by the Association and such rules and regulations may require that any such individual be a guest of an Owner who has the right to use such facility and/or pay a reasonable use fee set by the Association.

3.14 DELEGATION OF USE: Subject to the provisions of this Declaration, the By-Laws, and the reasonable rules and regulations from time to time adopted by the Association, any Owner may delegate his right to use and enjoy the Common Area to Residents of his Dwelling Unit. An Owner shall delegate such rights to tenants and contract purchasers of the Dwelling Unit who are Residents. An Owner who is not a Resident of a Dwelling Unit may only use and enjoy the Common Area as permitted under rules and regulations adopted by the Association Board.

3.15 MAINTENANCE, REPAIRS AND REPLACEMENTS: Maintenance, operations, repairs and replacements of the Common Area shall be furnished by the Association, and shall include, without limitation, the following:

(a) The maintenance (including street cleaning, waste and snow removal), repair and replacement of the streets, walks, paths, parking areas, entrance area improvements, patios, patio sheds, access facilities, playgrounds, and of all other improvements on the Common Area; and



(b) Added planting, replanting, care and maintenance of trees, shrubs, flowers, grass and all other landscaping on the Common Area.

The cost of the maintenance, repairs and replacement of the Common Area shall be Common Expenses. If (i) any portion of the Common Area is dedicated to the City of Overland Park as a public way by Association, (ii) such dedicated portion serves as a means of access to and from any part of the Common Area, and (iii) as a condition of the acceptance of the dedication, the City requires that the Association maintain any part or all of the landscapable areas on the dedicated portion, then such landscapable areas shall be maintained by the Association as provided in this Section 3.15 and the cost of such maintenance shall be a Common Expense.

**3.16 OWNER EXCLUSIVE USE AND MAINTENANCE:** The Owner of each Lot shall have an exclusive right to use the patio, its related storage shed, and such portion of the green areas which may be enclosed by privacy screening, as the same may immediately adjoin his Lot, and such Owner shall have the primary responsibility to maintain the same in a manner which compliments the aesthetic appearance of his Neighborhood; provided, in the event such Owner should not reasonably satisfy such maintenance obligations, upon reasonable notice the Association shall proceed to satisfy the same, charging costs of such maintenance to that Owner. The Association shall include within its rules and regulations provisions which implement these Sections 3.16 matters.

**3.17 DAMAGE BY RESIDENT:** If, due to act or omission of a Resident of a Dwelling Unit, or of a household pet or guest or other authorized occupant or invitee of the Owner of a Dwelling Unit, damage shall be caused to the Common Area and maintenance, replace or replacements shall be required thereby, which would otherwise be a Common Expense, then the Owner of the Dwelling Unit shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Residential Association Board, to the extent not covered by insurance, if any, carried by the Residential Association.

**3.18 ALTERATIONS, ADDITIONS OR IMPROVEMENTS:** No alterations, additions or improvements shall be made to the Common Area without the prior approval of the Residential Association Board. The Residential Association may cause alterations, additions or improvements to be made to the Common Area, and the cost thereof shall be paid from special assessment, as more fully described in this Declaration.

3.19 EASEMENTS AND LICENSES: The Residential Association from time to time shall have the right and authority from time to time to lease or grant easements, licenses, or concessions with regard to any portions or all of the Common Area for such uses and purposes as the Residential Association Board deems to be in the best interests of the Owners and which are not prohibited hereunder including, without limitation, the right to grant easements for utilities and similar and related purposes. Any and all proceeds from Leases, easements, licenses or concessions with respect to the Common Area shall be used to pay the Common Expenses.

3.20 INSURANCE:

(a) the Residential Association shall have the authority to and shall obtain fire and all risk coverage insurance covering the improvements to the Common Area for the full insurable replacement value of such improvements.

(b) The Residential Association shall have the authority to and shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, and workmen's compensation insurance and other liability insurance as it may deem desirable, insuring each Owner, the Residential Association, its directors and officers, the Developer, the managing agent, and their respective employees and agents, from liability resulting from an occurrence on or in connection with, the Common Area. The Residential Association Board may, in its discretion, obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 4.06. Such insurance coverage shall include cross liability claims of one or more insured parties.

(c) The Residential Association and each Owner hereby waives and release any and all claims which they may have against any Owner, including members of an Owner's family, the Residential Association, its directors and officers, the Developer, the managing agent and their respective employees and agents, for damage to the Common Area or to any personal property located in the Common Area caused by fire or other casualty, to the extent that such damage is covered by fire and other forms of casualty insurance, and to the extent this release is allowed by policies for such insurance. To the extent possible, all policies secured by the Association Board under subsections (a) and (b) shall contain waivers of the insurer's rights to subrogation against any Owner, members of any Owner's family, the Association, its director and officers, the Developer, the managing agent, and their respective employees and agents.

(d) The premiums for any insurance obtained under this Section shall be Common Expenses.

3.21 CONDEMNATION: In the case of a taking or condemnation by a competent authority of any part of the Common Area, the proceeds awarded in such condemnation shall be paid to the Residential Association and such proceeds, together with any Common Area Capital Reserves being held for such part of the Common Area, shall, in the discretion of the Residential Association Board, either (i) be applied to pay the Common Expenses, (ii) be distributed to the Owners and their respective mortgagees, as their interests may appear, in equal shares, or (iii) be used to acquire additional real estate to be used and maintained for the mutual benefit of all Owners, as Common Area under this Declaration. Any acquisition by the Residential Association pursuant to this Section of real estate which shall become Common Area hereunder shall not become effective unless and until a supplement to this Declaration, which refers to this Section and legally describes the real estate affected, is executed by the Residential Association and recorded.

3.22 NO DEDICATION TO PUBLIC USE: Nothing contained in this Declaration shall be construed or be deemed to constitute a dedication, express or implied, of any part of the Common Area to or for any public use or purpose whatsoever.

3.23 OBSTRUCTIONS: There shall be no obstruction of the Common Area and nothing shall be stored in the Common Area without the prior consent of the Association Board.

3.24 PETS: No animal of any kind shall be raised, bred or kept in the Common Area. The Residential Association Board may from time to time adopt rules and regulations governing the use of the Common Area by pets, including, without limitation, rules and regulations which set aside certain portions of the Common Area as a "dog run" or which require an Owner to clean up after his pet. Any pet causing or creating a nuisance or unreasonable disturbance on the Common Area shall be permanently removed from the Premises upon three days written notice from the Residential Association Board to the Owner of the Dwelling Unit containing such pet and the decision of the Residential Association Board shall be final.

3.25 PROSCRIBED ACTIVITIES: No noxious or offensive activity shall be carried on in the Common Area nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the residents.

3.26 STRUCTURAL IMPAIRMENT: Nothing shall be done in, on or to the Common Area which would impair the structural integrity of any building or structure located thereon.

3.27 NO UNSIGHTLY USES: No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out on any portion of any Dwelling Unit Exterior, Garage Exterior or the Common Area. The Common Area shall be kept free and clear of all rubbish, debris and other unsightly materials and no waste shall be committed thereon. All rubbish shall be deposited in such areas and such receptacles as shall be designated by the Residential Association Board.

3.28 USE OF WATER: The Association shall have the right to use water from taps or spigots which are attached to Dwelling Units or Garages for the purpose of watering the green areas contained in the Common Area. If the cost of the use of such water by the Association is not separately charged or metered to the Residential Association, the Residential Association shall reimburse the Owner who pays for the water on a reasonable basis as agreed upon between the Residential Association or the Owner.

3.29 USE OF DWELLING UNIT EXTERIORS: The Residential Association shall have the right from time to time to attach to the exterior of Dwelling Units or the Garages various items of personal property used by the Residential Association to provide services to the Common Area hereunder including, without limitation, radio transmitters used in connection with the security system and main junctions for Common Area lighting and electricity.

3.30 RULES AND REGULATIONS: The use and enjoyment of the Common Area shall at all times be subject to reasonable rules and regulations duly adopted by the Residential Association.

3.31 SUSPENSION OF RIGHTS: Upon the giving of written notice thereof to a Resident, the Residential Association Board or its authorized committee may, in addition to any remedies it may have hereunder, suspend the right of such Resident to use any recreational facilities located on the Common Area as follows:

(a) For so long as any assessment against such Resident's Lot remains unpaid, plus a reasonable time thereafter as determined by the Residential Association Board; or

(b) For so long as such Resident shall be and shall continue to be in violation of any provision of this Declaration, the By-Laws of the Residential Association, or the rules and regulations provided herein.

Any such notice shall state the reason for the suspension. Any resident who receives such notice may, within three days after receipt of such notice, demand a hearing before the Residential Association Board or its authorized committee. At such a hearing a member of the Residential Association Board shall present to the Resident the grounds for the suspension notice and the



Resident shall have an opportunity to challenge such grounds and to present any evidence on his behalf subject to such reasonable rules of procedure as may be established by the Residential Association Board or its authorized committee, which rules shall adhere to the generally accepted standards of due process. If the Resident demands a hearing as herein provided, his suspension shall not become effective until the hearing has been held and notice of the decision of the Residential Association Board or its authorized committee confirming the suspension and the terms thereof has been given to the Resident. The decision of the Residential Association Board or its authorized committee shall be final and binding.

#### ARTICLE FOUR

##### Residential Association

4.01 OVERALL CONTROL: The Residential Association Board, or a duly authorized committee created pursuant to the By-Laws, shall have the right and power from time to time to adopt reasonable rules and regulations governing the architectural design and exterior finish of all structures or improvements (including, without limitation, fencing, walls, and shrubbery privacy screening) from time to time located on the Premises, including, without limitation, each Dwelling Unit and Garage structure and all improvements located on the Common Area.

4.02 THE ASSOCIATION: The Residential Association is incorporated as a not-for-profit corporation. The Residential Association shall be the governing body for all of the Owners and for the maintenance and architectural control of the Dwelling Unit Exteriors, Garage Exteriors and Common Areas and for purposes specified in this Declaration.

4.03 MEMBERSHIP: Subject to the further provisions of this Section, each Owner shall be a member of the Residential Association. There shall be one membership per Dwelling Association Unit. If the Record ownership of a Dwelling Unit shall be in more than one Person, or if an Owner is a trustee, corporation, partnership or other legal entity, then the individual who shall enjoy the membership attributable thereto and who shall be entitled to vote at any meeting of the Owners shall be designated by such Owner or Owners in writing to the Board at the time such Owner or Owners become Record owner of the Dwelling Unit and if in the case of multiple individual Owners no designation is given, then the Board at its selection may recognize an individual Owner of the Dwelling Unit as the the individual who shall enjoy such membership and the right to vote at any meeting of the Owners. The individual who enjoys membership with respect to a Dwelling Unit shall be referred to

herein as a "Voting Member". Membership shall be appurtenant to and may not be separated from ownership of a Dwelling Unit. Ownership of a Dwelling Unit shall be the sole qualification for membership. The Association shall be given written notice of the change of ownership of a Dwelling Unit within 10 days after such change.

4.04 THE BOARD: The Board shall consist of eight (8) individuals, each of whom shall be a Voting Member. The Board shall be elected at each annual meeting of the Owners as provided by the By-Laws.

4.05 VOTING RIGHTS: Whenever a vote of the Owners of the Residential Association is required, at any meeting of such Owners or otherwise, such votes shall be cast by the Voting Members and each Voting Member shall have one (1) vote.

4.06 DIRECTOR AND OFFICER LIABILITY: Neither any of the directors nor any of the officers of the Residential Association shall be personally liable to the Owners for any mistake of judgment or for any other acts or omissions of any nature whatsoever as such directors and officers except for any acts or omissions found by a court to constitute gross negligence or fraud. The Residential Association shall indemnify and hold harmless each of the directors and each of the officers, his heirs, executors or administrators, against all contractual and other liabilities to others arising out of contracts made by or other acts of the directors and officers on behalf of the Owners or the Residential Association or arising out of their status as directors or officers unless any such contract or act shall have have been made fraudulently or with gross negligence. It is intended that the foregoing indemnification shall include indemnification against all costs and expenses (including, but not limited to, counsel fees, amounts of judgments paid and amounts paid in settlement) actually and reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative, or other, in which any such director or officer may be involved by virtue of such person being or having been such director or officer; provided, however, that such indemnity shall not be operative with respect to (i) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director or officer, or (ii) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such person being adjudged liable for gross negligence or fraud in the performance of his duties as such director or officer.

4.07 INSURANCE: The insurance other than title insurance which shall be carried upon the condominium property and the personal property of the Owners shall be governed by the following provisions:

4.08 AUTHORITY TO PURCHASE: NAMED INSURED. The Board of Directors of the Association shall obtain such insurance as is herein required and as it deems advisable, including, but not limited to, insurance against loss or damage by fire and all other risks, extended coverage and umbrella protection for at least the replacement cost (and not the depreciated cost) of all the property in the Common Area, and all Dwelling Units and Garages including a provision insuring that the insurance policy will always cover the replacement value of the property. Such insurance coverage shall be written on the property in the name of the Residential Association for coverage of the Common Areas and in the name of the Board of Directors of the Association as trustee for each of the Owners for the Dwelling Units and Garages. Premiums for such insurance shall be Common Expenses. Provisions for such insurance shall be without prejudice to the right of each Owner to insure his or her own Dwelling Unit or Garage for his or her own benefit which is not in conflict with insurance procured by the Association. Such insurance purchased by the Board of Directors of the Association, as trustee, shall be for the Owners and their mortgagees without naming them as their interest may appear. Provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Owners. Such policies shall provide that payments for losses thereunder by the insurer shall be made to the Association for the Common Area or to the Insurance Trustee. Such policies and endorsements thereon shall be deposited with the Insurance Trustee. Owners may obtain insurance coverage at their own expense upon their own personal property and for their personal liability and other expenses.

4.09 INSURER: The insurer shall be a highly rated insurance company listed in "Best's Insurance Key Rating Guide" authorized to do business in Kansas.

4.10 COVERAGE:

a. Casualty. All buildings and improvements upon the land including Dwelling Units, Garages and improvements on the Common Areas and the interior portions thereof and all personal property included in the Common Areas shall be insured under one policy, if possible, in an amount equal to the maximum insurable replacement value. Such coverage shall afford protection against.

i. Loss or damage by fire and all other risks covered by a standard extended coverage endorsement, and

ii. Such other risks as from time to time shall be customarily covered with respect to buildings and improvements similar in construction, location and use as the buildings on the land, including, but not limited to vandalism and malicious mischief.

b. Public Liability for the Association and, if deemed advisable, for the Owners in such amounts and with such coverage as shall be required by the Board of Directors of the Association, including, but not limited to, hired automobile and non-owned automobile coverages, and with cross-liability endorsements to cover liabilities of the Owners as a group or an individual Owner.

c. Such other insurance as the Board of Directors of the Association shall determine from time to time to be desirable.

d. Required Endorsements. All casualty 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 or neglect of any person when the act or neglect of any person is beyond the control or not within the knowledge of the Association; an endorsement that the policy may not be cancelled or substantially modified without at least 30 days prior written notice to all named insureds including any and all mortgagees of the Dwelling Units; and endorsement waiving apportionment of loss in the event of other insurance insuring the same risk; and an endorsement waiving the right to subrogation as against an Owner.

4.11 PREMIUMS: Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense except when an Owner's usage of his Dwelling Unit or Garage causes the premium to increase or be increased over that of the normal premium for customary usage of a Dwelling Unit or Garage, the individual Owner shall be responsible for the additional premium.

4.12 INSURANCE TRUSTEE; SHARES OF PROCEEDS: All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees as their interests may appear, and shall provide that all proceeds covering property losses shall be paid to any bank in Kansas with trust powers as may be designated as the Insurance Trustee by the Board of Directors of the Association, which Trustee is herein referred to as the Insurance Trustee. 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 proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein and in the Insurance Trust for the benefit of the Owners and their mortgagees as set forth in paragraph 4.13a. and b.



4.13 DISTRIBUTION OF PROCEEDS: Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners in the following manner:

a. Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provisions made therefor.

b. Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the Owner(s) of the property damaged, remittances to Owner(s) and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Dwelling Unit and Garage and may be enforced by such mortgagee.

c. Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owner, remittances to Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of Dwelling Unit and Garage and may be enforced by such mortgagee.

d. Certificates. In making distribution to Owners and their mortgagees, the Insurance Trustee may rely upon a Certificate of the Association made by its President and Secretary as to the names of the Owners and their Dwelling Unit and Garage.

4.14 ASSOCIATION AS AGENT: The Association is hereby irrevocably appointed agent for each Owner and for each mortgagee or owner of other liens upon a Dwelling Unit and Garage and for each Owner of any other interest in the Premises to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

4.15 DETERMINATION TO RECONSTRUCT OR REPAIR: If any part of the Dwelling Units, Garages and Common Area property including individual Dwelling Units or Garages shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined by the Association within sixty (60) days of the casualty subject to the following:

a. Common areas and facilities. If the damaged improvement is a part of the Common Area and facilities, the damaged property shall be reconstructed or repaired unless it is determined in the manner elsewhere provided that the Association shall be terminated.

b. If after the damage it is found by the Board of Directors that half or more of the Dwelling Units and Garages are tenantable, then such damage shall be repaired, reconstructed and rebuilt to a standard and design comparable to that which existed prior to the damage or destruction. No lesser standard or design will be permitted unless approved by a vote of seventy-five (75%) percent of the Owners in the Association and the mortgagees of record.

c. If after the damage or destruction it is found that less than half of the Dwelling Units and Garages are tenantable, then the damaged property will not be repaired, rebuilt or reconstructed unless within sixty (60) days after the casualty the Owners representing seventy-five (75%) percent of the Dwelling Units shall agree in writing to such rebuilding, reconstruction or repair.

d. Certificate. The Insurance Trustee may rely upon a Certificate of the Association made by the President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

4.16 PLANS AND SPECIFICATIONS: Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original Dwelling Units, Garages or Common Area improvements, or if not, then according to plans and specifications approved by the Board of Directors of the Association duly recorded amending this Declaration.

4.17 RESPONSIBILITY: The cost of rebuilding, repairing, redecorating and refurnishing of a Dwelling Unit or Garage, which cost has not been covered by insurance purchased by the Association, shall be borne by and paid for by the Owner. The responsibility of reconstruction and repair, in all other instances, shall be that of the Association.

4.18 ESTIMATES OF COSTS: Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, or on which the Association has insurance, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

4.19 ASSESSMENTS:

a. For Common Areas and facilities if the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against all the Owners in sufficient amounts to provide funds to pay such costs and such assessments shall be in proportion to the owners share in the Common Areas and facilities.

b. If the proceeds of insurance are not sufficient to defray the estimated costs of repair and reconstruction of the individual Dwelling Units and Garages, then the Owners of the subject Dwelling Unit and Garage shall pay the excess cost thereof as set forth in paragraph 4.21b.

4.20 DEDUCTIBLE PROVISION: The funds necessary to cover any deductible amount under an insurance policy against which a claim is made shall be a Common Expense.

4.21 CONSTRUCTION FUNDS: The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from assessments against Owners, shall be disbursed in payment of such costs in the following manner:

a. Association. The Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

b. Insurance Trustee. The proceeds of insurance collected on account of a casualty and the sums paid upon assessment shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

i. The insurance proceeds shall be paid and applied as follows:

1. First: to the cost of repair and reconstruction of the Common Areas and facilities.

2. Second: to the cost of repair and reconstruction of the damaged Dwelling Units and Garages in the proportion as the damage of each Dwelling Unit and Garages bears to the damage to all Dwelling Units and Garages damaged.

3. Third: if any surplus then remains, then to the Owners and their individual mortgagees, as their interest then appear.

ii. If the cost of repairing and reconstructing an individual Dwelling Unit and Garage shall be in excess of the amount allocated to that Dwelling Unit and Garage by 4.21(b)(i), above, the excess cost shall be paid by the Owner to the Association at the time a contract is entered into by the Association for such repair and reconstruction. If an Owner shall fail to pay his share of the costs at the time requested, no repair or reconstruction work shall be performed on that Dwelling Unit and Garage except such work as shall be deemed by

the Board of Directors to be absolutely necessary for the safety and protection of the other Owners until such share of the costs has been paid. If an Owner shall have repaired or reconstructed his Dwelling Unit and Garage, then upon completion of such repair or reconstruction, the amount allocated to that Dwelling Unit and or Garage shall be paid by the Association to the Owner. The determination of whether the work has been completed shall be made by the Association.

iii. The Board of Directors shall have the authority to determine whether cost of repair and reconstruction in excess of the insurance proceeds for an individual Dwelling Unit or Garage or Dwelling Units or Garages should be borne by the Association as a whole. If such determination is made, then a special assessment thereto shall be levied and the proceeds of such assessment added to the construction fund. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds.

iv. If there is a balance in a construction fund after payments of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the Owners and their mortgagees in the same proportion as an individual Owners contribution bears to the total contribution by such Owners to the construction fund, except that the part of a distribution to a beneficial owner which is not in excess of assessments paid by such owner into the construction fund shall not be made payable to any mortgagee.

v. If an architect is employed by the Association to supervise the reconstruction and repair, then (a) the architect shall determine the proportional share that the damage to an individual Dwelling Unit or Garage bears to the total damages and (b) disbursement from the construction fund shall be upon order of the Board of Directors with approval of the architect.

vi. Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund nor to determine the payee nor the amount to be paid, nor to determine whether surplus funds to be distributed are less than the assessment paid by Owners. Instead, the Insurance Trustee may rely upon a Certificate of the Association made by its President and Secretary as to any or all of such matters and stating that the sums to be paid are due and properly payable and stating the name of the payee and the amount to be paid; provided, that when a mortgagee is herein required to



be named as payee, the Insurance Trustee shall also name the mortgagee as payee of any distribution of insurance proceeds to an apartment Owner, and further provided that when the Association or a mortgagee which is the beneficiary of an insurance policy the proceeds of which are included in the construction funds, so requires, the approval of an architect named by the Association for disbursements in payment of costs of reconstruction and repair.

## ARTICLE FIVE

### Insurance

5.01 RESIDENTIAL ASSOCIATION INSURANCE: The Board shall obtain comprehensive public liability insurance, including liability for injuries to and death of persons, and property damage, in such limits as it shall deem desirable, workmen's compensation insurance, and other liability insurance as it may deem desirable, insuring each Owner, the Residential Association, its directors and officers, the Developer and the managing agent and their respective employees and agents, from liability in connection with the Common Areas, Dwelling Units and Garages. In its discretion, the Board may obtain any other insurance which it deems advisable including, without limitation, insurance covering the directors and officers of the Residential Association from liability for good faith actions beyond the scope of their respective authorities and covering the indemnity set forth in Section 4.06. Any such insurance coverage shall include cross liability claims of one or more insured parties. The premiums for any such insurance shall be Common Expenses.

## ARTICLE SIX

### Assessments

6.01 LIEN AND PERSONAL OBLIGATION: Each Owner (whether a Voting Member or not) of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be and is deemed to covenant and hereby agrees to pay to the Residential Association such assessments and other charges or payments as are levied or imposed upon Lot Owners pursuant to the provisions of this Declaration. Such assessments or other charges or payments, together with interest thereon at any annual rate of eight percent (8%) and reasonable costs and fees of collection (collectively, "Assessments" in this Article Six) shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made in favor of the Residential Association. Each such Assessment shall also be the personal obligation of each Owner of such Lot at the time at which each such Assessment is due.

6.02 PURPOSE OF ASSESSMENTS: The Assessments levied by the Residential Association shall be exclusively for the purposes of promoting the recreation, health, safety and welfare of members of the Residential Association, to administer the affairs of the Residential Association, and to pay the Common Expenses.

6.03 ANNUAL ASSESSMENT: Each year on or before December 1, the Board shall adopt and furnish each Owner with a budget for the ensuing calendar year which shall show the following, with reasonable explanations and itemizations:

- (a) The estimated Common Expenses;
- (b) The estimated amount, if any, to maintain adequate reserves for Common Expenses including, without limitation, amounts to maintain the Capital Reserve;
- (c) The amount of the "Annual Assessment", which is hereby defined as the amount determined in (a) above, plus the amount determined in (b) above, minus excess funds, if any, from the current year's Assessment;
- (d) The "Total Assessable Area", which shall be determined by calculating the sum of the following amounts determined with respect to each Lot which the Board estimates will be or become subject to assessment (under Section 6.04) during the ensuing calendar year: (i) the number of months during which the Board estimates that the Lot shall be subject to assessment, multiplied by (ii) the Assessable Area of the Lot; and
- (e) That portion of the Annual Assessment which shall be payable by the Owner for each month during which his Lot is subject to assessment, which shall be determined for each Lot by multiplying the Annual Assessment by a fraction, the numerator of which shall be the Assessable Area of the Lot and the denominator of which shall be the Total Assessable Area.

6.04 PAYMENT OF ANNUAL ASSESSMENT: On or before the 1st day of January of the ensuing year, and on or before the 1st day of each and every month thereafter until the effective date of the next Annual Assessment or revised Annual Assessment, each Owner of a Lot which is subject to assessment shall pay to the Residential Association, or as it may direct, that portion of the Annual Assessment which is payable by such Owner under Section 6.03(e).

6.05 REVISED ANNUAL ASSESSMENT: If the Annual Assessment proves inadequate for any reason (including non-payment of any Owner's Assessment) or proves to exceed funds reasonably needed, then the Board may increase or decrease the Assessments payable under Section 6.03(e) as of the first day of a month by the giving of written notice thereof (together with a revised budget for the

balance of the year and reasons for the increase) not less than ten (10) days prior to the effective date of the revised Annual Assessment. Prior to the Turnover Date no Assessment shall be revised more than once each year. After the Turnover Date, the Annual Assessment shall not be revised more than three (3) times each year.

6.06 SPECIAL ASSESSMENT: In order to meet extraordinary financial needs of the Residential Association from time to time for a specific purpose including, without limitation, to make additions, alterations or improvements to the Common Areas, Dwelling Unit Exteriors or Garage Exteriors, the Board, from time to time, may levy a special assessment; provided, that, if during any calendar year a proposed expense which is to be paid from a special assessment, when added to other expenses, if any, which are to be paid from special assessments levied during such year exceeds \$50.00 multiplied by the number of Lots subject to assessment, then such proposed expenses shall not be incurred without the affirmative vote of more than fifty percent (50%) of the Voting Members. Each Owner shall be responsible for the payment of the amount of the special assessment multiplied by the ratio of the Assessable Area of his Lot to the total of the Assessable Areas of all of the Lots then subject to assessment. The Board shall serve notice of a special assessment on all Owners by a statement in writing giving the amount and reasons therefor, and the special assessment shall be payable in such manner and on such terms as shall be fixed by the Board. Any assessments collected pursuant to this Section shall be segregated in a special account and used only for the specific purpose set forth in the notice of assessment.

6.07 CAPITAL RESERVE: The Residential Association shall segregate and maintain a special reserve account to be used solely for making capital expenditures in connection with the Common Areas, Dwelling Unit Exteriors, Garage Exteriors ("Capital Reserve"). The Board shall determine the appropriate level of the Capital Reserve based on a periodic review of the useful life of improvements to the Common Areas, Dwelling Unit Exteriors as well as periodic projections of the cost of anticipated major repairs or improvements to the Common Areas, Dwelling Unit Exteriors and Garage Exteriors or the purchase of equipment to be used by the Residential Association in connection with its duties hereunder. Each budget shall disclose that percentage of the Annual Assessment which shall be added to the Capital Reserve and each Owner shall be deemed to make a capital contribution to the Residential Association equal to such percentage multiplied by each installment of the Annual Assessment paid by such Owner.

6.08 INITIAL CAPITAL CONTRIBUTION: Upon the closing of each sale of each Lot, Dwelling Unit and Garage by an Owner to a purchaser for value, the purchasing Owner shall become obligated to make a capital contribution to the Residential Association in

an amount equal to two (2) months' Annual Assessment at the rate in effect with respect to the sole Lot as of the closing. Said amount shall be paid to the Residential Association at such time or times as provided in the purchase contract covering the sale of the Lot, Dwelling Unit and Garage, but in no event later than six (6) months from closing. Said amount shall be held and used by the Residential Association for its working capital needs. On the sale of the Lot, Dwelling Unit and Garage, the amount of excess paid in above the amount of time purchasing Owner owned the Lot, Dwelling Unit and Garage shall be refunded.

6.09 NONPAYMENT OF ASSESSMENTS: Any Assessments or other charges or payments which an Owner is required to make or is liable for hereunder which are not paid when due shall be deemed delinquent. If an Assessment or other charge or payment is not paid within thirty (30) days after the due date, it shall bear interest from the due date at the highest legal rate then permitted in Kansas, and the Board (i) may bring an action against any Owner personally obligated to pay the same, together with interest, costs and reasonable attorneys' fees of any such action, which shall be added to the amount of such Assessment or other charge or payment and shall be included in any judgment rendered in such action and (ii) may enforce and foreclose any lien which it has or which may exist for its benefit. No Owner may waive or otherwise escape liability for the Assessments or other charges or payment provided for herein by non-use, abandonment or transfer of his Lot.

6.10 ASSOCIATION'S LIEN SUBORDINATED TO MORTGAGES: The lien provided for in Section 6.01 shall be subordinate to the lien of any first mortgage at any time placed upon any Lot. Such lien shall not be affected by any sale or transfer of any Lot, except that a sale or transfer pursuant to a decree of foreclosure or in lieu of foreclosure shall extinguish the lien for Assessments which become payable prior to such sale or transfer. Any sale or transfer shall not relieve the purchaser or transferee of a Lot from liability for, nor the Lot so sold or transferred from the lien of, any Assessment which thereafter may become due.

## ARTICLE SEVEN

### Easement Rights

7.01 EASEMENT RIGHTS: The Residential Association, its agents and employees, shall have the right of ingress and egress over and upon the Dwelling Unit Exteriors and Garage Exteriors for any and all purposes in connection with the rights and duties of the Umbrella Association under the Umbrella Declaration, including, without limitation, the right to use water from taps or spigots



which are attached to Dwelling Unit Exteriors or Garage Exteriors, the right to attach certain items of personal property to Dwelling Unit Exteriors or Garage Exteriors, as set forth in Sections 3.20 and 3.21, respectively, of the Umbrella Declaration.

7.02 SERVICES BY UMBRELLA ASSOCIATION TERMINATED: From the date of recording of this Third Amendment, the Residential Association shall furnish landscaping, snow removal, waste removal or other similar services with respect to the Lots hereunder for which the Umbrella Association was responsible, including any services to the Common Area. The cost of any such services shall be paid by the Residential Association based on generally accepted accounting principles, and any allocation so made shall be final and binding.

## ARTICLE EIGHT

### Party Walls

8.01 PARTY WALL: Every wall, including the foundations therefor, which is built as a part of the original construction of a structure and placed on the boundary line between separate Dwelling Units or separate Garages in such structure, shall constitute and be a "Party Wall", and the Owner of a Dwelling Unit or a Garage immediately adjacent to a Party Wall shall have the obligation and be entitled to the rights and privileges of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls.

8.02 RIGHTS IN PARTY WALLS: Each Owner of Lot improvements which may be adjacent to a Party Wall shall have the right to use the Party Wall for support of the structure originally constructed thereupon and all replacements thereof and shall have the right to keep, maintain, repair and replace therein all pipes, conduit and ducts originally located therein and all replacements thereof.

8.03 DAMAGE TO PARTY WALLS: If any Party Wall is damaged or destroyed through the act or acts of any Owner of Lot improvements which may be adjacent to a Party Wall, or acts of his agents, servants, tenants, guests, invitees, licensees or members of his family, whether such act is willful, negligent or accidental such Owner shall forthwith proceed to rebuild or repair the same to as good a condition as in which such Party Wall existed prior to such damage or destruction without costs therefor to the Owner of the other adjoining Lot improvements. Any Party Wall damaged or destroyed by some act or event other than one caused by the Owner of a Lot which is adjacent to such Party Wall, or his agents, servants, tenants, guests, invitees, licensees or members of his family, shall be rebuilt or repaired by

the Owners of the adjacent Dwelling Units or Garages to as good condition as in which such Party Wall existed prior to such damage or destruction at the joint and equal expense of such Owners, and as promptly as is reasonably possible; provided that the cost of repairing or replacing any portion thereof which is part of a Dwelling Unit Exterior or Garage Exterior shall be paid by the Residential Association as a Common Expense.

8.04 CHANGE IN PARTY WALL: Any Owner of a Lot who proposes to modify, rebuild, repair or make additions to any structure upon his Lot improvements in any manner which requires the extension, alteration or modification of any Party Wall, shall first obtain the written consent thereto, as to said Party Wall, of the Owner of the other adjacent Lot improvements and the Board, in addition to meeting any other requirements which may apply, including, without limitation, the requirements under the Umbrella Declaration.

8.05 ARBITRATION: In the event of a disagreement between Owners of Lot improvements adjoining a Party Wall with respect to their respective rights or obligations as to such Party Wall, upon the written request of either of said Owners to the other the matter shall be submitted to the Board and the decision of the Board shall be final and binding.

## ARTICLE NINE

### Miscellaneous

9.01 DURATION: Except as otherwise specifically provided herein, the easements, restrictions, conditions, covenants, reservations, liens and charges, which are granted, created, reserved or declared by this Declaration shall be appurtenant to and shall run with and bind the land for a period of forty (40) years from the date of Recording of this Declaration and for successive periods of ten (10) years each unless revoked, changed or amended in whole or in part by a Recorded instrument executed by not less than seventy-five percent (75%) of the then Owners.

9.02 SEVERABILITY: Invalidity of all or any portion of any of the easements, restrictions, covenants, conditions, reservations, by legislation, judgment or court order shall in no way affect liens, charges, rights, benefits and privileges and other provisions of this Declaration which shall remain in full force and effect.

9.03 AMENDMENT: Subject to the provisions of Section 9.04 and 9.09, the provisions of this Declaration may be abolished, amended and modified, enlarged or otherwise changed in whole or in part, and any part or all of the Premises may be removed from the provisions of this Declaration, only by an instrument executed by not less than seventy-five percent (75%) of the then Owners and the provisions of this Section 9.03 may be amended only by an instrument executed by all of the Owners. No amendment shall become effective until recorded.

9.04 MORTGAGEES' RIGHTS: Anything in this Declaration to the contrary notwithstanding, each holder of a first mortgage secured by a Lot (a "Mortgagee") shall have the following rights:

(a) No amendment to the Declaration which changes the ratio of assessments against Owners shall become effective without the consent of all Mortgagees.

(b) Upon the specific written request of a Mortgagee to the Board, the Mortgagee shall receive any one or more (as designated) of the following:

(1) Copies of budgets, notices of assessment, or any other notices or statements provided under this Declaration by the Residential Association to the Owner of the Lot covered by the Mortgagee's mortgage; (2) any audited or unaudited financial statements of the Residential Association which are prepared for the Residential Association and distributed to the Owners; (3) copies of notices of meetings of the Owners; (4) copy of any notice of the decision of the Owners to release any part or all of the Premises from provisions of this Declaration; (5) copy of any notice of the decision of the Owners to make any material amendment to this Declaration, the By-Laws, or the Articles of Incorporation of the Residential Association; (6) notice of the decision of the Residential Association to terminate professional management, if any, and to assume self management; (7) notices of default (remaining uncured for sixty (60) days) in the performance of any obligation under this Declaration (or any rules or documents provided hereunder) on the part of any Owner who may from time to time be designated as its borrower by such Mortgagee; (8) copies of the By-Laws or any of the rules and regulations adopted by the Residential Association, or any changes therein, which relate to the architectural design or exterior appearance of Lots and/or their maintenance or upkeep.

Failure of the Residential Association to provide any of the foregoing to a Mortgagee who has made a proper request therefor shall not affect the validity of any action which is related to any of the foregoing.

9.05 ENFORCEMENT: Enforcement of the provisions contained in this Declaration and the rules and regulations adopted hereunder may be by any proceeding at law or in equity by the Residential Association or any aggrieved person against any person or persons violating or attempting to violate any such provisions, either to restrain such violation or to recover damages, and against the land to enforce any lien created hereunder; and failure by the Board, any Mortgagee or any Owner to enforce any provision shall in no event be deemed a waiver of the right to do so thereafter.

9.06 NOTICES: Notices provided for in this Declaration shall be in writing and, (i) shall be addressed to 10581 Foster, Overland Park, Kansas 66212 in the case of notice to the Residential Association, and (ii) shall be addressed to the assigned street address of his Dwelling Unit in the case of notice to an Owner of such Lot. Notices addressed as above shall be deemed delivered when mailed by registered or certified mail or when delivered in person or, if served upon an Owner, when deposited in the mailbox of the Dwelling Unit of such Owner. The Association may designate a different address by giving written notice (in the above manner) of such change of address to the Owners.

9.07 CAPTIONS OR CONFLICTS: The Article and Section headings are intended for convenience only and shall not be construed with any substantive effect in this Declaration. In the event of any conflict between the statements made in the recitals to this Declaration and the provisions contained in the body of this Declaration, the provisions contained in the body of this Declaration shall govern.

9.08 PERPETUITIES AND OTHER INVALIDITY: If any of the options, privileges, covenants or rights created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provisions, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living lawful descendants of Ronald Reagan, President of the United States.

9.09 ASSIGNMENT OF DEVELOPER'S RIGHTS: Developer may, at any time, and from time to time, assign all or any portion of its rights under this Declaration to any assignee for value, provided (a) that any such assignee also receives with any such assignment an interest in the Development Area; and (b) that any such assignment is made pursuant to an instrument in writing, acknowledged and recorded in the Office of the Register of Deeds of Johnson County, Kansas.



This Third Amendment and Supplement shall be binding upon and inure to the benefit of the parties hereto and those having any interest in the Premises and Added Premises which are the subject of the Declaration, prior amendments and this Third Amendment and Supplement, and their respective heirs, administrators, executors, successors and assigns.

This Third Amendment and Supplement may be executed in one or more counterparts, each of which shall be deemed to be an original and, when taken together, shall constitute one and the same instrument.

This Third Amendment and Supplement shall be effective when executed (in one document or in counterparts) by seventy-five percent (75%) or more of the Owners of Lots on the Property which is the subject of the Declaration.

Each of the Owners executing this Third Amendment and Supplement represent and warrant that he, she, it or they, respectively, are the sole owners in fee of the Dwelling Units and Garages described opposite his, her, its or their names, all located in that part of Tract F, INDIAN CREEK VILLAGE, SECOND PLAT, a subdivision of land in the City of Overland Park, Johnson County, Kansas, as described and depicted by such symbols in the Certificates of Survey certified by Shafer, Kline and Warren, P.A., on December 15, 1978, captioned "Certificate of Survey, Part of Tract "F", Indian Creek Village, Second Plat (Indian Creek Woods Neighborhood I)" and recorded in the Office of the Register of Deeds of Johnson County, Kansas in Volume 1417 at Page 349.

IN WITNESS WHEREOF, the undersigned have executed this Third Amendment and Supplement as of the date first above written.

INDIAN CREEK WOODS TOWNHOME  
ASSOCIATION I

By Robert B. Gadd  
Managing Agent

Attest:

Robert B. Gadd  
Acting Secretary

Dated: April 9, 1986

ACKNOWLEDGEMENT

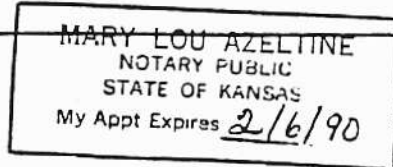
STATE OF KANSAS       )  
                              )  
COUNTY OF JOHNSON    )       ss:

On this 9th day of April, 1986, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert B. Gadd, Managing Agent for Indian Creek Woods Townhome Association I, who is personally known to me to be such person, and who is personally known to me to be the same person who executed the within instrument, and duly acknowledged the execution of the same to be his free act and deed.

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

Mary Lou Azeltine  
Notary Public  
Mary Lou Azeltine

My Commission Expires:



a. Neighborhood I: legally described as follows, and as separately described and depicted as the "Neighborhood I Legal Description" in the certificate of survey (the "Survey") certified by Shafer, Kline & Warren P.A. on December 15, 1978, captioned "Certificate of Survey Part of Tract "F" Indian Creek Village, Second Plat (Indian Creek Woods Neighborhood I)", and recorded on December 22, 1978 as File No. 1205053 in Book 1417 at Page 349.

#### Neighborhood I Legal Description

All that part of Tract "F", INDIAN CREEK VILLAGE, SECOND PLAT, a subdivision of land now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the East line of said Tract "F" and 516.61 feet North of the Southeast corner thereof as measured along said East line; thence S 0° 00' 28" W, along the East line of said Tract "F", a distance of 516.61 feet, to the Southeast corner thereof; thence N 89° 54' 10" W, along the South line of said Tract "F", a distance of 9.91 feet, to a point of curvature; thence Westerly and Northwesterly, along the Southerly line of said Tract "F", said line being on a curve to the right, having a radius of 270 feet, and a central angle of 18°, a distance of 84.82 feet, to a point of tangency; thence N 71° 54' 10" W, along the Southerly line of said Tract "F", a distance of 147.67 feet, to a point of curvature; thence Northwesterly and Westerly, along the Southerly line of Tract "F", said line being on a curve to the left, having a radius of 330 feet, and a central angle of 18°, a distance of 103.67 feet, to a point of tangency; thence N 89° 54' 10" W, along the Southerly line of said Tract "F", a distance of 306.61 feet, to its intersection with the Southerly extension of the East line of the excepted Tract as shown on said Plat of INDIAN CREEK VILLAGE, SECOND PLAT; thence N 0° E, along the East line and its extension of said excepted tract, a distance of 351.58 feet; thence N 90° E, a distance of 79.21 feet; thence N 38° 48' E, a distance of 329.52 feet; thence S 51° 12' E, a distance of 18.54 feet, to a point of curvature; thence Southeasterly, along a curve to the right, having a radius of 221 feet, and a central angle of 41° 29' 30", a distance of 160.04 feet, to a point of reverse curvature; thence Southeasterly and Easterly, along a curve to the left, having a radius of 22 feet, a central angle of 80° 17' 30", and whose initial tangent bearing is S 9° 42' 30" E, a distance of 30.83 feet, to a point of tangency; thence N 90° E, a distance of 42.07 feet, to a point of curvature; thence Easterly and Northerly, along a curve to the left, having a radius of 83 feet, and a central angle of 84° 25' 30", a distance of 122.30 feet; thence N 90° E, a distance of 179.12 feet, to the point of beginning.

b. Pool Facilities: legally described as follows, and as separately described and depicted as the "Pool Facilities Legal Description" in the Survey:

#### Pool Facilities Legal Description

All that part of Tract "F", INDIAN CREEK VILLAGE, SECOND PLAT, a subdivision of land now in the City of Overland Park, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the Southerly line of said Tract "F", and 652.63 feet Westerly of the Southeast corner thereof, as measured along said Southerly line, said point also being the intersection of the South line of said Tract "F" with the Southerly extension of the East line of the excepted Tract, as shown on

said Plat of INDIAN CREEK VILLAGE, SECOND PLAT; thence N 89° 54' 10" W, along the Southerly line of said Tract "F", a distance of 31.37 feet, to a point of curvature; thence Westerly and Northwesterly, along the Southerly line of said Tract "F", said line being on a curve to the right having a radius of 220 feet, and a central angle of 36° 26' 52", a distance of 139.95 feet; thence N 0° E, a distance of 165.14 feet, to the Southwesterly corner of said excepted Tract; thence N 90° E, along the South line of said excepted Tract, a distance of 162 feet to the Southeast corner thereof; thence S 0° E, along the Southerly extension of the East line of said excepted Tract, a distance of 208.45 feet, to the point of beginning.

Except the following scheduled "Lots" (together with their respective Assessable Areas) as that term is defined and used in the original Declaration of Indian Creek Woods Townhome Association I, with each Lot consisting of a Dwelling Unit and its related Garage within a certain building, as all of the same are described and depicted by distinguishing number or symbol in the Certificate of Survey, certified by Shafer, Kline and Warren, P.A. on December 15, 1978 captioned "Certificate of Survey Part of Tract "F", Indian Creek Village, Second Plat (Indian Creek Woods Neighborhood I)", and recorded on December 22, 1978, No. 1205053 in Book 1417 at Page 349.



1	LA	LAG	2,064
1	LB	LBG	1,760
1	LC	LCG	1,584
1	RA	RAG	2,064
1	RE	RBG	1,760
1	RC	RCG	1,584
2	LA	LAG	2,064
2	LB	LBG	1,760
2	LC	LCG	1,584
2	RA	RAG	2,064
2	RE	RBG	1,760
2	RC	RCG	1,584
3	LA	LAG	2,064
3	LB	LBG	1,760
3	LC	LCG	1,584
3	RA	RAG	2,064
3	RE	RBG	1,760
3	RC	RCG	1,584
4	LA	LAG	2,064
4	LB	LBG	1,760
4	LC	LCG	1,584
4	RA	RAG	2,064
4	RE	RBG	1,760
4	RC	RCG	1,584
5	LA	LAG	2,064
5	LB	LBG	1,760
5	LC	LCG	1,584
5	RA	RAG	2,064
5	RE	RBG	1,760
5	RC	RCG	1,584
6	LA	LAG	2,064
6	LB	LBG	1,760
6	LC	LCG	1,584
6	RA	RAG	2,064
6	RE	RBG	1,760
6	RC	RCG	1,584
7	LA	LAG	2,064
7	LB	LBG	1,760
7	LC	LCG	1,584
7	RA	RAG	2,064
7	RE	RBG	1,760
7	RC	RCG	1,584
13	LA	LAG	2,064
13	LB	LBG	1,760
13	LC	LCG	1,584
13	RA	RAG	2,064
13	RE	RBG	1,760
13	RC	RCG	1,584