

Recorded in Platte County, Missouri



Recording Date/Time: 05/29/2025 at 01:37:03 PM

Book: 1419 Page: 307

Instr #: 2025005228

Pages: 3

Fee: \$27.00 E 20250004856



Christopher L. Wright
Recorder of Deeds

STEWART TITLE

PLATTE COUNTY MISSOURI CERTIFICATION RECORDER OF DEEDS

EXEMPT DOCUMENT

The Recorder of Deeds has added this page to your document per
compliance with State law under Exempt Status.
RSMo 59.310.4 (effective January 1, 2002)

Christopher L. Wright
Recorder of Deeds
415 Third St., Suite 70
Platte City, MO 64079

This Page is Part Of The Document – Do Not Detach



Kansas City

414 E. 12th Street
Kansas City, MO
64106

Legislation Text

File #: 241082

ORDINANCE NO. 241082

Approving the plat of Barry View Townhomes, an addition in Platte County, Missouri, on approximately 15 acres generally located between Northwest Milrey Drive and Northwest 83rd Street, creating seven lots and five tracts for the purpose of a residential development; accepting various easements; establishing grades on public ways; authorizing the Director of City Planning and Development to execute and/or accept certain agreements; and directing the City Clerk to facilitate the recordation of this ordinance and attached documents. (CLD-FnPlat-2024-00027)

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the plat of Barry View Townhomes, a subdivision in Platte County, Missouri, a true and correct copy of which is attached hereto and incorporated herein by reference, is hereby approved.

Section 2. That the plat granting and reserving unto Kansas City an easement and license or right to locate, construct, operate and maintain facilities including, but not limited to, water, gas, sewerage, telephone, cable TV, surface drainage, underground conduits, pad mounted transformers, service pedestals, any and all of them upon, over, under and along the strips of land outlined and designated on the plat by the words utility easement or U/E be and the same are hereby accepted and where other easements are outlined and designated on the plat for a particular purpose, be and the same are hereby accepted for the purpose as therein set out.

File #: 241082

Section 3. That the grades of the streets and other public ways set out on the plat, herein accepted are hereby established at the top of curb, locating and defining the grade points which shall be connected by true planes or vertical curves between such adjacent grade points, the elevations of which are therein given, in feet above the City Directrix.

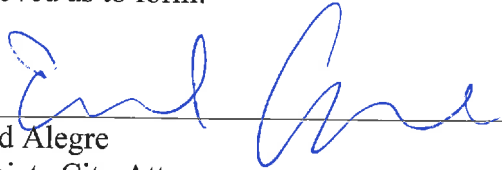
Section 4. That the Director of City Planning and Development is hereby authorized to execute a Covenant to Maintain Stormwater Agreement, to be in a form substantially as that attached hereto as Exhibit A and incorporated herein by reference.

Section 5. That the Director of City Planning and Development is hereby authorized to execute and/or accept any and all agreements necessary to clear the title of any right of way, utility easements or other public property dedicated on the plat.

Section 6. That the City Clerk is hereby directed to facilitate the recordation of this ordinance, together with the documents described herein and all other relevant documents, when the Developer has met all of the requirements for the plat to be released for recording, in the Office of the Recorder of Deeds of Platte County, Missouri.

Section 7. That the Council finds that the City Plan Commission has duly recommended its approval of this plat on December 4, 2024.

Approved as to form:


Eluard Alegre
Associate City Attorney



Authenticated as Passed


Quinton Lucas, Mayor


Marilyn Sanders, City Clerk

Date Passed

JAN 03 2025

This is to certify,
2024, and all
special assess-
ments and
improvements on
property described

City Treasurer, Kansas City

By 

Dated, May 21, 2025

48
9

Recorded In Platte County, Missouri



Recording Date/Time: 05/29/2025 at 01:37:03 PM

Book: 1419 Page: 310

Instr #: 2025005232

Pages: 9

Fee: \$48.00 S 20250004856



Christopher L. Wright
Recorder of Deeds

STEWART TITLE

WHEN RECORDED RETURN TO:

Ms. Rachelle M. Biondo
Rouse Frets White Goss Gentile Rhodes, P.C.
4510 Bellevue Avenue, Suite 300
Kansas City, Missouri 64111-3538

Title of Document:

Covenant to Maintain Storm Water Detention and BMP
Facilities – Plat of Barry View Townhomes

Date of Document:

May 22, 2025

Grantor(s):

Kansas City, Missouri

Grantee(s):

Barryview Holdings, LLC and
Barryview Townhomes Owners Association

Grantee(s) Mailing Address:

7607 NW John Ander Road
Kansas City, MO 64152

Legal Description:

See Exhibit A

**COVENANT TO MAINTAIN STORM WATER DETENTION AND BMP FACILITIES
PLAT OF BARRY VIEW TOWNHOMES**

THIS COVENANT made and entered into this 22 day of May, 2025, by and between Kansas City, Missouri, a constitutionally chartered Municipal corporation (**City**), and Barryview Holdings, LLC, a Missouri limited liability company (**Owner**) and Barryview Townhomes Owners Association, a Missouri mutual benefit non-profit corporation (the **Association**).

WHEREAS, Owner has an interest in certain real estate generally located in Kansas City, Platte County, Missouri, (**Property**) more specifically described in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Owner intends to cause the Property to be platted as Plat of Barry View Townhomes, (**Plat**), in accordance with Chapter 88, Code of Ordinances of the City of Kansas City, Missouri; and

WHEREAS, Owner intends to subdivide the Property and create pursuant to the Plat Lots of 1, 2, 3, 4 5 and 6 and Tracts A, B, C and D as shown on Exhibit B attached hereto; and

WHEREAS, the improvement proposed by Owner on the Property warrant storm water management control and water quality Best Management Practice facilities (BMPs), collectively hereinafter referred to as (The Facilities); and

WHEREAS, The Facilities, located on Tract B within the Plat, require preservation and maintenance in order to ensure continuous and perpetual operation and effectiveness in controlling storm water runoff rates, volumes, and quality; and

WHEREAS, the City and Owner agree that it is in the public interest to detain storm water and provide BMP(s) to treat the stormwater for the benefit of the Property and surrounding areas; and

WHEREAS, these covenant provisions for proper operation, preservation and maintenance of The Facilities are necessary to serve the development;

NOW, THEREFORE, Owner, the Association and City, for and in consideration of the benefits to themselves, their assigns and future grantees do hereby agree as follows:

Sec. 1. The Association as its sole cost shall:

- a. Be responsible for the perpetual preservation, maintenance, repair and replacement, if necessary, of The Facilities located on of Tract B.
- b. Maintain the pipes, structures, BMPs, grounds, and appurtenances for the Facilities located on Tract B.
- c. Keep the pipes, structures, BMPs, and appurtenances open and free of silt and non-beneficial vegetation.
- d. Keep the pipes, structures, BMPs, and appurtenances in good working condition or replace same if necessary.

- e. Control the growth of the vegetation and grass areas, not identified as beneficial to the BMPs, on Tract B to the limits prescribed by the Kansas City Code of Ordinances.
- f. Maintain the grades within Tract B pursuant to the approved plan on file in the office of the Director of ~~City Planning & Development~~ ^{KC Water} and identified as File No. 2025-006.
- g. Obtain all necessary improvement and repair permits prior to performing any work on The Facilities.

Sec. 2. City is granted the right, but is not obligated to enter upon Tract A in order to inspect, maintain, repair, and/or replace The Facilities including the pipes, structures, grounds, and appurtenances if the Association fails to maintain same. In the event that the City does provide maintenance for the Facilities, then City may:

- a. Charge the costs for such maintenance, repair, or replacement against Owner, and/or the owner of Tract B, and/or the owner of Lots 1, 2, 3, 4, 5 and 6 served by the Facility on Tract B;
- b. Assess a lien on either the Tract B or on the Lots 1, 2, 3, 4, 5 and 6 or both served by the Facility on Tract B;
- c. Maintain suit against Owner, and/or the owner of Tract B and/or the owners of Lots 1, 2, 3, 4, 5 and 6 served by the Facility on Tract B for all cost incurred by the City for such maintenance.

Unless necessitated by a threat to life and/or safety, City shall notify Owner, the Association and/or the then-current owners of Tract B and Lots 1, 2, 3, 4, 5 and 6 not less than thirty (30) days before it begins maintenance of The Facilities.

Sec. 3. Owner, the Association and/or the owner of Tract B shall not use, nor attempt to use, in any manner which would interfere with the operation of The Facilities, in such manner as would interfere with the proper, safe, and continuous maintenance and use thereof, and, in particular, shall not build, thereon or thereover, any structure which may interfere, or cause to interfere, with the maintenance and use thereof.

Sec. 4. This Covenant shall run with the land generally described in Exhibit "A." Owner shall remain liable under the terms of this Covenant unless and until Owner assigns its rights and obligations to a third party and such assignment is accepted by the City.

Sec. 5. To the extent allowed by law, in the event of a default under a loan agreement by a third party who is assigned the rights and obligations in accordance with the terms of this Covenant, the City will agree to an assignment from the defaulting third party to the secured lender.

Sec. 6. Notices. All notices required by this Covenant shall be in writing sent by regular United States mail, postage prepaid, commercial overnight courier or facsimile and addressed as hereinafter specified. Each party shall have the right to specify that notice be addressed to any other address by giving the other party ten (10) days notice thereof. Unless a party to this Agreement has given ten (10) days notice of a change of person and address for purposes of

notice under this Agreement to the other party in writing, notices shall be directed to the following:

Notices to the City:
 Director of Kansas City Water
 4800 E. 63rd Street
 Kansas City, Missouri 64130

Notice to Owner shall be addressed to:
 Barryview Holdings, LLC
 7607 NW John Ander Road
 Kansas City, MO 64152

Notice to Association:
 Barryview Townhomes Owners Association
 7607 NW John Ander Road
 Kansas City, MO 64152

Sec. 7. This Agreement shall not be amended, modified, canceled or abrogated without the prior written consent of the City.

Sec. 8. Invalidation of any part or parts of this Covenant by judgment or other court action shall in no way affect any of the other provisions, which shall remain in full force and effect.

Sec. 9. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

Sec. 10. Upon the effective date of this Covenant, the City shall file this Covenant in the Office for recording real estate documents in Platte County, Missouri, and shall be binding on Owner, the Association, its successors, assigns and transferees.

Sec. 11. Owner and the Association shall jointly and severally release, hold harmless, indemnify and defend City and its agents, officers and employees from any and all responsibility, liability, loss, damage or expense resulting to Owner or to any person or property caused by or incidental as to the design, function, construction, maintenance or failure to maintain The Facilities.

ATTESTATION BY CITY CLERK:

KANSAS CITY, MISSOURI

City Clerk

By: Kenneth C. Morgan
Director of Kansas City Water

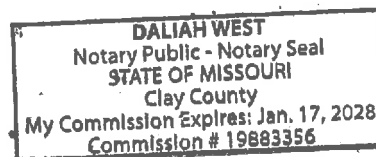
Approved as to form:

Assistant City Attorney

STATE OF MISSOURI)
) SS
COUNTY OF Jackson)

BE IT REMEMBERED that on this 19 day of May, 2025, before me, the undersigned, a notary public in and for the county and state aforesaid, came Kenneth Morgan, Director of Kansas City Water, of Kansas City, Missouri, a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and Marilyn Sanders, City Clerk of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of Kansas City, Missouri, and such persons duly acknowledge the execution of the same to be the act and deed of said Kansas City, Missouri.

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


Notary Public
My Commission Expires: January 17, 2028

OWNER**BARRYVIEW HOLDINGS, LLC**

a Missouri limited liability company

Brian Mertz

I hereby certify that I have authority to execute this document on behalf of Owner.

By: Title: memberDate: 4/29/25

Check one:

☐ Sole Proprietor☐ Partnership☐ Corporation☒ Limited Liability Company (LLC)

Attach corporate seal if applicable

STATE OF Missouri)
) SS
 COUNTY OF Jackson)

BE IT REMEMBERED, that on the 29 day of April, 2025, before me, the undersigned notary public in and for the county and state aforesaid, came Brian Mertz, to me personally known, who being by me duly sworn did say that he is the member of Barryview Holdings, LLC, a Missouri limited liability company, and that said instrument was signed on behalf of said limited liability company and acknowledged said instrument to be the free act and deed of said limited liability company.

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


 Notary Public


My commission expires: 7/31/28

RACHELLE M. BIONDO
 NOTARY PUBLIC - NOTARY SEAL
 STATE OF MISSOURI
 MY COMMISSION EXPIRES JULY 31, 2028
 JACKSON COUNTY
 COMMISSION #12499262

ASSOCIATION

BARRYVIEW TOWNHOMES OWNERS ASSOCIATION, a Missouri mutual benefit non-profit corporation
 Brian Mertz

I hereby certify that I have authority to execute this document on behalf of Association.

By: 

Title: President

Date: 4/29/25

Check one:

() Sole Proprietor

() Partnership

(X) Corporation (non-profit)

() Limited Liability Company (LLC)

Attach corporate seal if applicable

STATE OF Missouri)
) SS
 COUNTY OF JACKSON)

BE IT REMEMBERED, that on the 29 day of April, 2025, before me, the undersigned notary public in and for the county and state aforesaid, came Brian Mertz, to me personally known, who being by me duly sworn did say that he is the President of Barryview Townhomes Owners Association, a Missouri mutual benefit non-profit corporation, and that said instrument was signed on behalf of said non-profit corporation and acknowledged said instrument to be the free act and deed of said non-profit corporation.

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


 Notary Public

My commission expires: 7/31/28

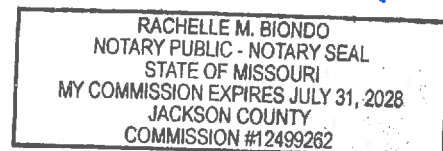


EXHIBIT A

All that part of the South Half of the Southeast Quarter of Section 12, Township 51 North, Range 34 West in Kansas City, Platte County, Missouri, more particularly described as follows:

Commencing at the Southeast corner of the Southeast Quarter of said Section 12; thence North 89 degrees 42 minutes 16 seconds West, along the South line of the Southeast Quarter of said Section 12, a distance of 1308 feet, to a point on the Southerly extension of the East line of Tract "C" TIFFANY MANOR, 2ND PLAT, a subdivision in Kansas City, Platte County, Missouri; thence North 0 degrees 24 minutes 40 seconds East along the East line and its extension of said Tract "C" and along the West line and its extension of Tract "A", TIFFANY MANOR, a subdivision in Kansas City, Platte County, Missouri, a distance of 535 feet, to the True Point of Beginning of subject tract; thence continuing North 0 degrees 24 minutes 40 seconds East, along the East line of said Tract "C" and along a line parallel to the East line of the Southeast Quarter of said Section 12, a distance of 428.64 feet, to the Northeast corner of said Tract "C"; thence North 89 degrees 46 minutes 28 seconds West, along the North line of said Tract "C", a distance of 10 feet to the Southeast corner of Tract 4, TIFFANY MANOR, 3RD PLAT, a subdivision in Kansas City, Platte County, Missouri; thence North 0 degrees 24 minutes 40 seconds East along the East line of said TIFFANY MANOR, 3RD PLAT, a distance of 355 feet to a point on the North line of the South Half of the Southeast Quarter of said Section 12, said point also being on the South line of Lot 14, BERRY VIEW SQUARE – THIRD PLAT, a subdivision in Kansas City, Platte County, Missouri; thence South 89 degrees 46 minutes 28 seconds East along the North line of the South Half of the Southeast Quarter of said Section 12 and along the South line and its extension of said Lot 14 and along the South line and its extension of Lots 13, 12 and 11, BERRY VIEW SQUARE, SECONDS PLAT, a subdivision in Kansas City, Platte County, Missouri, a distance of 882 feet; thence South 0 degrees 24 minutes 40 seconds West, along a line parallel to the East line of the Southeast Quarter of said Section 12, a distance of 660 feet to a point on the North line of said Tract "A"; thence North 89 degrees 46 minutes 28 seconds West, along the North line of said Tract "A" and along a line 660 feet South of and parallel to the North line of the South Half of the Southeast Quarter of said Section 12, a distance of 75 feet; thence South 60 degrees 54 minutes 18 seconds West, along the Northwesterly line of said Tract "A", a distance of 253.93 feet; thence North 89 degrees 42 minutes 16 seconds West along a line parallel to the South line of the Southeast Quarter of said Section 12, a distance of 576 feet to the True Point of Beginning, subject to that part, if any, in streets, roadways, highways or other public rights-of-way.

Now known as, Lots 1, 2, 3, 4, 5 and 6 and Tracts A, B, C and D, Barry View Townhomes, a subdivision in the City of Kansas City, Platte County, Missouri.

Recorded in Platte County, Missouri



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Book: 1419 Page: 308

Instr #: 2025005230

Pages: 2

Fee: \$49.00 N 20250004856

STEWART TITLE



Christopher L. Wright
Recorder of Deeds

PLATTE COUNTY MISSOURI CERTIFICATION RECORDER OF DEEDS

NON-STANDARD DOCUMENT

The Recorder of Deeds has added this page to your document per
compliance with State law under Exempt Status.
RSMo 59.310.4 (effective January 1, 2002)

Christopher L. Wright
Recorder of Deeds
415 Third St., Suite 70
Platte City, MO 64079


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SUBORDINATION OF DEED OF TRUST

WITNESSETH, that Verimore Bank ("Lender"), whose address is 1925 Burlington Street, North Kansas City, Missouri 64116, as owner and holder of the note evidencing the debt secured by that certain Deed of Trust executed by Barryview Holdings, LLC, a Missouri limited liability company, dated December 18, 2024 and recorded in the office of the Recorder of Deeds for Platte County, Missouri, on December 19, 2024 in Book 1413, Page 742 as Document No. 2024012903 (the "Deed of Trust"), for value received does hereby subordinate the lien and effect of said Deed of Trust to the easements, right-of-ways, building setbacks, building lines and lot lines as shown on the property therein described on the Final Plat of Barry View Townhomes recorded in Book 23, Page 178, Document 2025005229. Provided, however, that this subordination shall not prejudice the lien of said Deed of Trust on the property therein described.

IN WITNESS WHEREOF, these presents have been executed by Lender pursuant to due authority, this 2nd day of April, 2025.

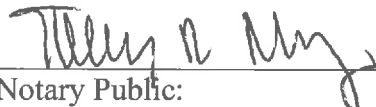
LENDER:**VERIMORE BANK**

By: 
 Name: Devon O'Kane
 Title: Director of Rural Market Lending

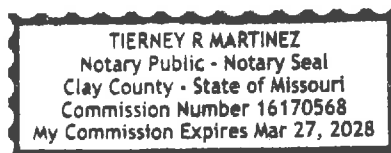
STATE OF Missouri)
) ss.
 COUNTY OF Clay)

On this 2nd day of April, 2025, before me, the undersigned Notary Public, in and for said state, personally appeared Devon O'Kane, the _____ of Verimore Bank, known to me to be the person described in and who executed the within document in behalf of said Verimore Bank, and acknowledged to me that he/she executed the same for the purposes therein stated, and he/she acknowledged execution thereof to be on behalf of and the free act and deed of said Verimore Bank.

Subscribed and sworn to me the day and year above written.


 Notary Public:

My commission expires:
March 27, 2028



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Recorded in Platte County, Missouri



Recording Date/Time: 05/29/2025 at 01:37:03 PM

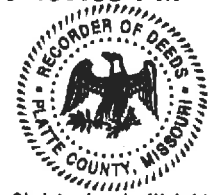
Book: 1419 Page: 309

Instr #: 2025005231

Pages: 38

Fee: \$135.00 S 20250004856

STEWART TITLE



Christopher L. Wright
Recorder of Deeds

Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

TITLE OF DOCUMENT:

DECLARATION OF HOMES ASSOCIATION AND
COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS OF BARRYVIEW TOWNHOMES

DATE OF DOCUMENT:

April 30, 2025

GRANTOR:

BARRYVIEW HOLDINGS, LLC

Mailing Address:

7607 NW John Anders Road
Kansas City MO 64152

GRANTEE:

BARRYVIEW HOLDINGS, LLC

Mailing Address:

7607 NW John Anders Road
Kansas City MO 64152

LEGAL DESCRIPTION:

See Exhibit A

REFERENCE BOOK & PAGE:

N/A

**DECLARATION OF HOMES ASSOCIATION
AND COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF
BARRYVIEW TOWNHOMES**

THIS DECLARATION OF HOMES ASSOCIATION AND COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF BARRYVIEW TOWNHOMES (this "**Declaration**") is made and executed as of the 30th day of April, 2025, by **BARRYVIEW HOLDINGS, LLC**, a Missouri limited liability company (the "**Developer**"), with its principal office and mailing address at 7607 NW John Anders Road, Kansas City MO 64152.

RECITALS:

A. Developer is the owner of certain real property located in Kansas City, Platte County, Missouri (the "**City**"), legally described as set forth on **EXHIBIT A** attached hereto (the "**Property**").

B. Developer has subdivided the Property pursuant to the final plat of BARRYVIEW TOWNHOMES recorded _____, 2025 in Plat Book _____ at Page _____ (the "**Original Plat**"). The Original Plat created (i) 7 lots (the "**Parent Lots**"), (ii) Tracts A-D, and (iii) certain private Streets.

C. The Developer intends to improve each Parent Lot with one or more multifamily building(s) ("**Building**") containing four (4) or six (6) Townhomes. Prior to the sale of any Townhome, Developer shall subdivide each Parent Lot into Townhome Lots and Common Lots by recording a "**Minor Subdivision**" in the Platte County Records. Each Townhome will be located on a separate Townhome Lot.

DECLARATION

In consideration of the promises and benefits set forth herein, and to provide the means and procedures to achieve them, the Developer hereby adopts this for the purpose of protecting the value and desirability of the Property.

**ARTICLE 1
DEFINITIONS**

When used in this Declaration or in any Supplemental Declaration, the following words shall have the meanings set forth below.

1.1. "**Articles**" mean the Articles of Incorporation of the Association, as amended from time to time.

1.2. "**Assessments**" means the Monthly Townhome, Special Townhome and Default Assessments levied pursuant to Article 6 hereof.

1.3. “**Association**” means the Barryview Townhomes Owners Association, a Missouri mutual benefit nonprofit corporation, and its successors and assigns.

1.4. “**Association Documents**” means this Declaration, the Articles, the Bylaws, all Supplemental Declarations and all procedures, rules, regulations and policies adopted under such documents by the Association.

1.5. “**Board of Directors**” means the governing body of the Association.

1.6. “**Building**” has the meaning set forth in Recital C hereof.

1.7. “**Bylaws**” means the Bylaws adopted by the Association, as amended from time to time.

1.8. “**Common Area**” means Tracts (including the Recreational Facility), Common Lots and the Streets, and all similar or other places or areas other than Lots which are owned by the Association and dedicated to, or set aside for, the general, non-exclusive use of all Owners, and all property of a similar character brought within the jurisdiction of this Declaration by all Supplemental Declarations and all Improvements located thereon.

1.9. “**Common Lot**” means those portions of any Parent Lot that are not Townhome Lots, as set forth in any Minor Subdivision.

1.10. “**Common Expenses**” means all costs and expenses including, without limitation, wages, utility charges, legal, accounting and other fees, taxes, insurance (including that required by Article 5.3 hereof), interest, supplies, parts, and management or service fees, incurred by the Association (a) to administer, service, conserve, manage, maintain, repair, renovate and replace the Common Area, and all improvements thereon, (b) to provide landscaping and care of grounds, (c) to provide snow removal, (d) to provide exterior repair and maintenance of Townhomes as set forth below, (e) to operate recreational and other facilities operated for the general benefit of the Owners, (f) to manage and conduct the affairs of the Association, (g) to repay funds borrowed by the Association, (h) to pay any deficit remaining from a previous assessment period, (i) to create a reasonable contingency or other reserve or surplus fund for maintenance, repairs, and replacement of Townhomes and improvements within the Common Area on a periodic basis, (j) which are expressly declared to be common expenses by this Declaration, any Supplemental Declaration or the Bylaws, or (k) which the Board of Directors determines to be common expenses of the Association.

1.11. “**Declaration**” means this Declaration of Homes Association and Covenants, Conditions, Restrictions and Easements of Barryview Townhomes, as it may be amended or supplemented from time to time.

1.12. “**Default Assessment**” has the meaning set forth in Article 6.1 hereof.

1.13. “**Developer**” means Barryview Holdings, LLC, a Missouri limited liability company, and its successors and assigns. If the Developer assigns less than all of its rights,

obligations and interest to one or more Successor Developers, the term "Developer" shall thereafter refer to both the Developer and all Successor Developers unless the context clearly means otherwise.

1.14. "**Fine**" and "**Lien Fee**" means those fines and lien fees which the Board of Directors may assess and impose against any Owner pursuant to the terms and conditions set forth Article 6.6 hereof.

1.15. "**Improvements**" has the meaning set forth in Article 10.2 hereof.

1.16. "**Townhome Lot**" any lot in the Subdivision that is created by a Minor Subdivision and is improved with a Townhome.

1.17. "**Manager**" means a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time pursuant to Article 4.5 hereof.

1.18. "**Member**" means a member of the Association as set forth in Article 3.1 hereof.

1.19. "**Monthly Townhome Assessment**" has the meaning set forth in Section 6.2 hereof.

1.20. "**Mortgage**" means any mortgage, deed of trust, contract for deed or other security document pledging or conveying in trust any Townhome Lot or interest therein as security for payment of a debt or obligation.

1.21. "**Mortgagee**" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

1.22. "**Owner**" or "**Townhome Owner**" means the owner of record, whether one or more persons or entities, of fee simple title to any Townhome Lot, including the Developer and the purchaser under a contract for deed. The term shall not include any person or entity having any interest in a Townhome Lot merely as security for the performance of an obligation, including a Mortgagee or a trustee or beneficiary under a deed of trust, unless and until such person has acquired fee simple title to the Townhome Lot pursuant to foreclosure or other proceedings.

1.23. "**Owner's Proportionate Share**" means a fraction, the numerator of which is the number of Townhome Lots then owned by such Owner within the Property, and the denominator of which is the total number of Townhome Lots then within the Property, as it may be expanded.

1.24. "**Party Wall**" means any wall which separates or divides two (2) Townhomes and includes any exterior wall of a Townhome with five (5) inches or less of airspace between it and the exterior wall of an adjacent Townhome whether or not utilities run within such airspace.

1.25. **"Property"** means and refers to the real property on **Exhibit A** attached to this Declaration and "Property" also includes all additional property, if any, brought within the jurisdiction of this Declaration by all Supplemental Declarations.

1.26. **"Proposed Construction"** has the meaning set forth in Article 10.2 hereof.

1.27. **"Recreational Facility"** means the swimming pool, clubhouse and other amenities (if any) developed on Tract C.

1.28. **"Restricted Common Area"** means any Common Area owned by the Association on or over which, with the approval of the Review Committee, are located specific Improvements or features including, but not limited to, patios/decks, fencing, driveways, sidewalks, landscaping features and air conditioning units or other items, which are intended to and in fact do serve or service the needs and interests of a single Townhome Lot and the Townhome thereon.

1.29. **"Review Committee"** has the meaning set forth in Article 10.1 hereof.

1.30. **"Special Townhome Assessment"** has the meaning set forth in Article 6.3 hereof.

1.31. **"Street"** shall mean any roadway, street, court, circle, terrace, drive, alley or other right-of-way designated for vehicular traffic shown on any plat of any part of the Property or the Subdivision, including, without limitation, Tract G.

1.32. **"Subdivision"** means, collectively, the Townhome Lots, the Common Areas (*i.e.*, the Streets, Tracts and Common Lots), all other parts of the Property.

1.33. **"Successor Developer"** means any person or entity to whom the Developer assigns or transfers all, or any part, of its rights, obligations or interests as the developer of the Property, as evidenced by an assignment or deed of record in the Office of the Recorder of Deeds for Platte County, Missouri designating such person or entity as a Successor Developer.

1.34. **"Supplemental Declaration"** means an instrument which amends or modifies this Declaration, as more fully provided for herein, including any which includes or adds Expansion Property.

1.35. **"Townhome"** means a residential dwelling constructed on any Townhome Lot with one or more Party Walls attaching it to one or more other Townhomes.

1.36. **"Tracts"** means those Tracts of land set forth in the Original Plat. As set forth in in the Plat, Developer intends to install a water drainage facility on Tract B, which shall be maintained by the Association as a Common Expense.

1.37. **"Turnover Date"** means the date the Developer, in its sole and absolute discretion, selects as the Turnover Date for the Property then covered by and subject to this

Declaration (as evidenced by a written instrument signed by the Developer and recorded in the Platte County Records”).

1.38. **“Working Capital Fund Contribution”** shall have the meaning set forth in Article 6.5 hereof.

ARTICLE 2 PERSONS AND PROPERTY BOUND BY DECLARATION

The benefits and burdens of this Declaration shall run with the land and shall inure to the benefit of, and be binding upon, the Developer, all Owners of Townhome Lots in the Subdivision and all persons or entities who shall hereafter acquire any interest in the Townhome Lots or other property within the Subdivision. The Developer and all persons who take any interest in a Townhome Lot shall, by taking such interest, be deemed to agree and covenant with all other Owners, the Association and the Developer, and their respective heirs, personal representatives, successors, transferees and assigns, to conform to, and observe, the covenants, conditions and restrictions in this Declaration, all Supplemental Declarations and the other Association Documents for the term hereof.

ARTICLE 3 MEMBERSHIP; VOTING; OPERATIONS

3.1. **Membership in The Association.** The Owner of each Townhome Lot within the Subdivision shall be a Member of the Association. If a Townhome Lot is owned by more than one Owner, all Owners of the Townhome Lot, collectively, shall be deemed the Member of the Association for such Townhome Lot. The Association shall be the sole judge of the qualifications of its Members and of their right to participate in its meetings and proceedings.

3.2. **Classes of Members.** There shall be one class of members consisting of the Developer and all Owners.

3.3. **Meetings.** Annual and special meetings of the Members shall be called, held and conducted in the manner provided in the Bylaws or, in the absence of any provision in the Bylaws, as provided by applicable Missouri law.

3.4. **Voting Rights.** Except as otherwise provided herein, including in Article 3.9 below, all Owners shall be entitled to vote on Association matters requiring a vote under this Declaration. Except as otherwise provided herein, including in Article 3.9 below, on all matters to be voted on by the Member, each Member shall have one (1) vote for each Townhome Lot owned. If more than one (1) Owner exists for any Townhome, the vote for such Townhome shall be exercised as the Owners determine among themselves and as they notify the Secretary of the Association in writing. Fractional votes shall not be permitted and there shall be only one (1) vote cast with respect to any Townhome Lot. Any person may be appointed as the proxy of an Owner by written appointment delivered to the Secretary of the Association before or at the Meeting at which the vote for which the proxy is being exercised. Proxies may be revoked at any time in writing delivered to the Secretary of the Association and shall not, under any

circumstance, be valid for more than three (3) years from the original date thereof. Unless specifically provided herein to the contrary, all matters requiring a vote of the Members under this Declaration shall be approved by the affirmative vote of a majority of the Members present at an annual or special meeting duly called where a quorum is present. A quorum shall be the presence of Members having ten percent (10%) of the votes entitled to be cast on a matter at the meeting, in person or by proxy; provided, however, that, unless one - third (1/3) or more of the Members having voting power are present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters described in the meeting notice.

3.5. **Transfer of Membership.** Membership is appurtenant to, and may not be separated from, ownership of any Townhome Lot. An Owner may not transfer, pledge or alienate membership in the Association in any way except in connection with the sale or encumbrance of the Townhome Lot and then only to the purchaser or Mortgagee of the Townhome Lot. Upon the sale of a Townhome Lot, the membership associated with the Townhome Lot shall automatically transfer to the purchaser of the Townhome Lot, or the purchaser's Mortgagee if so designated by the purchaser.

3.6. **Books and Records.** The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and to Mortgagees, current copies of the Association Documents and the books, records and financial statements of the Association. The Association may charge a reasonable fee for copying such materials.

3.7. **Association as Successor Developer.** On the Turnover Date, the Association shall succeed to all of the duties and responsibilities of the Developer under this Declaration. The Association shall not, however, succeed to any easements or rights of the Developer or others reserved in the Association Documents or pertaining to any other real property adjacent to the Subdivision which is owned by the Developer.

3.8. **Implied Rights and Obligations.** The Association may exercise all rights and privileges expressly granted to the Association in the Association Documents and all other rights and/or privileges reasonably implied from those expressly granted or reasonably necessary to effect any such duties and obligations expressly imposed upon the Association by the Association Documents.

3.9. **Developer's Control of Association Prior to Turnover Date.** Notwithstanding anything in this Article 3 or elsewhere in this Declaration to the contrary, until the Turnover Date, the Developer shall maintain absolute and exclusive control over the Association and the Review Committee, including appointment, election and removal of all directors and officers of the Association and all members of the Review Committee. Until the Turnover Date, only the Developer shall be entitled to cast any votes with respect to the election and removal of Association directors and officers and members of the Review Committee or any other matters requiring the vote or approval of Members or Owners. The Developer may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Article 3.9.

ARTICLE 4 POWER AND AUTHORITY; CASUALTY INSURANCE

4.1. **General Power and Authority of the Association.** Subject to any limitations in applicable laws and regulations and the Articles and Bylaws, the Association has the power and authority to take all action, and to refrain from taking all action, on behalf of the Association, it deems reasonably necessary to protect the rights and to fulfill the obligations of the Association under the terms of this Declaration. Such power and authority includes, without limitation, the following, which the Association may (but shall not be obligated or required to except for (f), (m), (n), and (o) below) exercise in its discretion:

(a) Accept by conveyance from the Developer and own the Common Area and any other areas of the Property to be held for the general benefit of the Owners;

(b) Enforce, either in the Association's name or in the name of any Owner within the Subdivision, the covenants, conditions, restrictions and easements imposed upon the Lots, the Common Area, or other parts of the Property as are in effect from time to time. The expenses and costs of any enforcement proceedings shall be paid out of the general funds of the Association. Nothing herein contained shall prevent the Developer, or any Owner having the right to do so, from enforcing in their own name any such covenants, conditions, restrictions or easements;

(c) Levy and collect all of the Assessments and all of the Working Capital Fund Contributions for Townhomes which are provided for in this Declaration in accordance with Article 9, and to charge reasonable admission fees, service charges and other amounts for the use of the Common Area;

(d) Manage and control as trustee and attorney-in-fact for all Members, all improvements upon and to the Common Area and other areas of the Property owned by the Association or held for the general benefit of the Owners in accordance with Section 5.2;

(e) Exercise control over easements (including any for water drainage control) it acquires from time to time or has pursuant to the initial or any subsequent plat for the Subdivision;

(f) Acquire, provide and maintain insurance for the protection of the Association, the Members, and the Common Area, including, without limitation, comprehensive public liability, officers and directors, workers compensation, fidelity insurance and bonds to protect against dishonest acts on the part of the Association's officers, directors, trustees, employees and agents and such other insurance against risks of a similar or dissimilar nature as the Board of Directors deems appropriate with respect to the Association's responsibilities and duties, including contractual liability for the indemnification set forth in Article 17.6 below;

(g) Subject to the voting requirements of Article 16.2 herein for amendment of this Declaration, dedicate, sell, subdivide or transfer all or any part of the Common Area to any public or private agency, authority, person or entity, but only with the prior consent of the Developer prior to the Turnover Date;

(h) Create, grant and convey easements upon, across, over, through and under the Common Area for ingress or egress or installation, replacement, repair and maintenance of all utilities or other such facilities including, but not limited to, water, sewers, natural gas, telephones, electricity and television cable systems;

(i) Establish and publish rules and regulations to regulate and control the Owners' use and enjoyment of the Common Area (including the Recreational Facility) as well as such other activities which effect the Members' quiet and peaceful use of the Townhome Lots within the Subdivision;

(j) Borrow money from any person, including the Developer, for the proper conduct of the Association's affairs, and the exercise of its powers and authority and the fulfillment of its obligations, subject to any limitations set forth in the Bylaws;

(k) Suspend the voting rights and other privileges of any Member during any period in which such Member is in default on payment of any Assessment or after notice and hearing for a period not to exceed ninety (90) days for infraction of published rules and regulations, unless such infraction is ongoing, in which case the rights and privileges may be suspended during the period of the infraction and for up to ninety (90) days thereafter;

(l) Fine and impose Lien Fees against any Member for infraction of any of the provisions of this Declaration or any published rules or regulations in amounts as may be determined and changed from time to time by the Board of Directors;

(m) Pursuant to Article 8, perform exterior maintenance and repair on each Townhome including, without limitation, painting, repairing, replacing and caring for roofs, gutters, down spouts, exterior building surfaces and other exterior improvements as elsewhere required in this Declaration and, if the need for such maintenance or repair is caused by the wasteful, negligent or intentional act or omission of an Owner of a Townhome, such Owner's family, guests, invitees, agents, licensees or authorized representatives, the cost thereof shall become an Assessment due from such Townhome Owner, alone, to the Association, and may be collected and enforced in the same manner as the collection and enforcement of the Monthly Townhome Assessment;

(n) Acquire, provide and maintain casualty and property insurance coverage on the Townhomes and their respective exteriors and any improvements in the Common Areas in accordance with Section 4.3 and Section 4.4;

(o) Provide for the mowing of lawns, maintenance of trees, shrubs and other plantings in the Common Areas and the plowing and clearing of snow from Streets and related Common Areas;

(p) Exercise all rights, power and authority granted to the Association by this Declaration;

(q) Assume and/or perform all rights and obligations under that certain "Covenant to Maintain Storm Water Detention and BMP Facilities – Plat of Barry View Townhomes" concerning the Common Areas.

(r) Pursuant to Article 4.5, engage a Manager to perform such duties, powers or functions of the Association as the Board of Directors may authorize from time to time as set forth in Article 4.5 below

4.2. **Exercise of Authority.** Unless specifically reserved to the Members by this Declaration, the Bylaws, the Articles or applicable law, all powers and authority of the Association shall be exercised by the Board of Directors, acting within its sole discretion. Although the Association may exercise the powers and authority granted in Article 4.1 hereof, the mere existence of such powers and authority shall not require the Board to exercise such powers or authority except for Article 4.1(f), (m), (n), and (o) which shall be performed by the Association. For example, although the Association has the power to provide for collection and disposal of rubbish, trash, refuse and garbage in the Subdivision, the Board may, in its discretion, choose not to exercise that power and, in lieu thereof, require the Owners to contract with the City or private haulers to dispose of their trash. The Association shall exercise such powers and authority in the discretion of its Board of Directors, unless otherwise specifically required or permitted herein or in the Articles or Bylaws to be exercised by the Members.

4.3. **Casualty Damage Insurance on Townhomes.** The Board of Directors shall obtain and maintain in full force and effect casualty insurance on the Townhomes and other insurable improvements on the Townhome Lots (including, unless the Board of Directors directs otherwise, the fixtures initially installed therein and replacements thereof up to the value of those initially installed therein by or for the Owners, but not including furniture, wall coverings, improvements, additions or other personal property supplied or installed by the Owners), together with all heating, ventilation, air conditioning equipment and other service machinery and utilities contained therein and covering the interests of the Owners and their Mortgagees, as their interests may appear. The insurance shall be carried in an amount also equal to the full replacement value (i.e. one hundred percent (100%) of the current replacement cost exclusive of land, foundation, excavation and other items normally excluded from coverage), without deduction for depreciation (such amount to be re-determined periodically by the Board of Directors with the assistance of the insurance company affording such coverage). Such insurance shall afford protection against loss or damage caused by fire, windstorm, hail and other hazards covered by the standard extended coverage policy or endorsement including debris removal, demolition, vandalism, malicious mischief and water damage. At the election of the Board of Directors, the insurance required under this Article 4.3 may be in the form of a "master" or "blanket" policy. In contracting for the policy or policies of insurance obtained pursuant to this

Article 4.3, the Board of Directors shall be required to make reasonable efforts to secure coverage which provides the following:

- (a) The following endorsements (or equivalent): (i) "cost of demolition"; (ii) "contingent liability from operation of building laws or codes"; (iii) "increased cost of construction"; and (iv) "agreed amount" or elimination of co-insurance clause; and
- (b) A provision that any "no other insurance" clause shall expressly exclude individual Owners' policies from its operation so that the casualty damage policy or policies purchased by the Board of Directors shall be deemed primary coverage and any individual Owners' policies shall be deemed excess coverage.

Prior to obtaining any policy of casualty damage insurance or any renewal thereof, and at such other intervals as the Board of Directors may deem advisable, the Board of Directors may obtain an appraisal from an insurance company, or such other source as the Board may determine, of the then current replacement cost of the Townhomes (exclusive of the land, excavations, foundations and other items normally excluded from such coverage) subject to insurance carried by the Association, without deduction for depreciation, for the purpose of determining the amount of casualty damage insurance to be secured pursuant to this Article 4.3. A certificate of such insurance, together with proof of payment of premiums and any notice issued as set forth above, shall be delivered to any Mortgagee requesting the same. The Mortgagee of a Townhome shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such Townhome. The premiums for such casualty damage insurance shall be a Common Expense to be paid by the Monthly Townhome Assessments levied by the Association.

Each Townhome Owner shall be responsible for the deductible under the Association's insurance with respect to property damage or casualty loss to such Owner's Townhome. The amount of such deductible shall be uniform for all Townhomes and shall be set by the Board of Directors from time to time in a reasonable amount.

4.4. **Insurance Requirements Generally.** All insurance coverage obtained by the Association shall be comply with the following terms and conditions:

- (a) The Developer shall be an additional named insured on all such policies as long as it owns any Townhome Lot;
- (b) The insurance coverage maintained by the Association shall not be brought into contribution with insurance purchased by the Owners or their Mortgagees;
- (c) Coverage under the policies shall not be prejudiced by (i) any act or neglect of any Owner, or their tenants, servants, agents, invitees, and guests when such act or neglect is not within the control of the Association, or (ii) any act, neglect or failure of the Association with respect to any portion of the Property over which the Association has no control;

(d) All policies shall be written by insurers licensed to do business in Missouri and holding a rating of BNI or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or, if not reasonably available, the most nearly equivalent rating; and

(e) All liability insurance shall also include a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another insured.

4.5. **Manager.** Any powers, duties or rights of the Association created pursuant to this Declaration, or of the Board, as provided by law and herein, may be delegated to a Manager under a management agreement, which Manager may or may not have a relationship to the Developer or its principals or affiliates; provided, however, that no such delegation shall relieve the Association of its obligation to perform such delegated duty.

4.6. **Townhome Owner's Insurance.** Each Townhome Owner and its occupants shall obtain insurance against liability for events occurring within such Owner's Townhome, losses with respect to personal property and furnishings and similar matters of the type and nature of coverage commonly referred to as "tenants' improvements and betterments" or an "H06" policy. Each Townhome Owner or its occupants may carry such insurance, in addition to that provided by the Association, as that Owner or occupant may determine, subject to the provisions hereof, and provided that no Townhome Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the blanket insurance carried pursuant hereto by the Association. In the event any Townhome Owner or an occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Townhome Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and directors, and all other Townhome Owners and their respective occupants.

ARTICLE 5 COMMON AREA

5.1. **Property Rights in the Common Area.** Subject to the other provisions hereof, every Member shall have a non-exclusive right and easement of enjoyment in and to the Common Area, including, without limitation, the Recreational Facility and the Streets, and such right and easement shall be appurtenant to and shall pass with the title to every Townhome Lot.

5.2. **Maintenance of the Common Area.** Pursuant to other provisions hereof, including Section 12.3, the Association shall own, manage, repair, maintain, replace, improve, operate and deal with the Common Area and keep it, and all improvements thereon, in good condition. The cost of performing these duties shall be a Common Expense.

5.3. **Insurance.** The Association may provide and maintain insurance for the protection, repair and replacement of the Common Area as set forth above.

5.4. **No Partition.** The Common Area shall be owned by the Association, and no Owner, group of Owners, or the Association shall bring any action for partition or division of the Common Area.

ARTICLE 6 ASSESSMENTS, FINES, LIEN FEES AND WORKING CAPITAL FUND CONTRIBUTIONS

6.1. **Obligation; Purpose.**

(a) The Association may assess against each Townhome Lot (and each such Owner of a Townhome Lot, by acceptance of a deed to such Owner's Townhome Lot, hereby agrees to pay to the Association all) Monthly Townhome Assessments, Special Townhome Assessments and Default Assessments.

(b) For purposes hereof, (i) "**Monthly Townhome Assessments**" are Assessments imposed and levied by the Board of Directors against each Townhome Owner in accordance with such Owner's Proportionate Share which are necessary to meet the Common Expenses, (ii) "**Special Townhome Assessments**" are Assessments against Townhome Owners for capital improvements to the Common Areas and other purposes as stated in Article 6.3 of this Declaration, and (iii) "**Default Assessments**" are Assessments assessed against a Townhome Lot as the result of the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

(c) Non-use of the Common Areas or services provided to all Townhome Owners shall not exempt any Owner from the obligation to pay assessments with respect thereto.

6.2. **Monthly Townhome Assessments.** Subject to the limitations set forth herein and any in the Articles and Bylaws, the Board of Directors, in its sole discretion, shall establish Monthly Townhome Assessments based upon the estimated Common Expenses for the subsequent fiscal year of the Association. Until modified as provided herein, the Monthly Townhome Assessments shall be in amounts as determined by the budgets established by the Board of Directors from time to time. The first Monthly Townhome Assessment for a Townhome Lot shall be made on the closing date for the purchase of such Townhome Lot by an Owner other than a sale of all of the Townhome Lots to Successor Developer who intends to operate the Subdivision as a rental community. The Monthly Townhome Assessments shall be made by the Board of Directors on or before January 1st of each year and shall be due and payable in equal monthly installments on or before the first day of each month. If the Board of Directors fails to timely make any Monthly Townhome Assessment for any fiscal year, the amount of such Monthly Townhome Assessment for the year shall automatically be the same as the Monthly Townhome Assessment for the immediately prior year. Prior to the Turnover Date, the Board of Directors may increase the Monthly Townhome Assessments as such Board shall determine appropriate. After the Turnover Date, the Monthly Townhome Assessments made by

the Board of Directors may not exceed (a) one hundred and twenty percent (120%) of the Monthly Townhome Assessments for the immediately preceding year without the approval of a majority of the Members present at a meeting duly called or (b) one hundred fifty percent (150%) of the Monthly Townhome Assessments for the immediately preceding year without the approval of sixty-six and 2/3 percent (66 2/3%) of the Members present at a meeting duly called. The Board of Directors may, but shall have no obligation to, make pro rata refunds of any Monthly Townhome Assessments in excess of the actual Common Expenses incurred in any fiscal year or may hold the same in reserve.

6.3. **Special Townhome Assessments.** Except as limited or prohibited by the Articles or Bylaws, the Board of Directors may levy in any fiscal year one or more Special Townhome Assessments, payable over any period as it determines, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, renovation or replacement of damaged Townhomes or improvements in the Restricted Common Areas or Common Area or for any other expenses incurred by the Association in fulfilling its obligations to all Townhome Owners under this Declaration or otherwise imposed upon the Association. In imposing any Special Townhome Assessment, the Board of Directors shall specifically refer to this Article 6.3. The Board of Directors shall promptly give the Townhome Owners written notice of the amount of all Special Townhome Assessments and the time for payment thereof. No payment of all or part of any Special Townhome Assessment shall be due less than thirty (30) days after such notice is given. This Article 6.3 shall not be construed as an independent source of authority for the Association to incur expense but shall be construed to prescribe the manner of assessing expenses related to the Townhomes, Common Areas, or Restricted Common Areas authorized by other sections of this Declaration.

6.4. **Default Assessments.** The Board of Directors may assess Default Assessments against any Member or any Owner of a Townhome at any time. Notice of the amount and due date of each Default Assessment shall be sent to the Member or the Owner subject to such Assessment at least thirty (30) days prior to the due date. Each Default Assessment shall become a lien against such Member's or such Owner's Townhome Lot when due and may be foreclosed or otherwise collected as provided in this Declaration.

6.5. **Working Capital Fund Contributions.** The Developer shall require the first Owner of a Townhome Lot (other than a sale of all of the Townhome Lots to Successor Developer who intends to the operating the Subdivision as a rental community) to make a nonrefundable contribution to the townhome working capital fund of the Association in an amount equal to three (3) times the monthly installment of the Monthly Townhome Assessment against such Townhome Lot then in effect (a "**Working Capital Fund Contribution**"). The Association shall maintain all such Working Capital Fund Contributions in its account(s) for the use and benefit of the Association in carrying out its duties hereunder including, without limitation, paying Common Expenses or meeting unforeseen Townhome expenditures. Such Working Capital Fund Contribution shall not relieve a Townhome Owner from making payments of the Assessments as they become due and is in addition thereto and nonrefundable in all events.

6.6. **Fines; Lien Fees.** The Board of Directors may assess and impose a Fine in such amount as the Board of Directors shall determine appropriate from time to time for each month in which any infraction of any of the provisions of this Declaration, the Articles, Bylaws or any rules or regulations promulgated by the Board is committed by any Owner of a Townhome or any tenant of any such Owner. The Board of Directors may promulgate and change from time-to-time rules or regulations setting forth procedures for appealing Fines. Fines shall be imposed only after notice and an opportunity to be heard before the Board of Directors. Cause for Fines shall not be for frivolous reasons but for those actions which violate the security of Owners, endangers occupants, cause a nuisance to Owners or their tenants or interfere with the quiet enjoyment of their Townhomes or the Common Areas or the Restricted Common Areas by other Owners or their tenants. Recourse to Fines will occur when situations are not corrected or continue to occur after written notice is given to an Owner. Warnings and recourse to Fines shall be as determined by the Board of Directors. Owners shall be responsible for the acts and omissions of tenants, guests or visitors who create such violations or infractions.

6.7. **Effect of Nonpayment; Liens.** Any Monthly Townhome Assessment, Special Townhome Assessment or Default Assessment or any Fine or Lien Fee (individually, the "**Delinquency**" and, collectively, the "**Delinquencies**") that is not paid within thirty (30) days after its due date shall be delinquent. Upon a Delinquency becoming delinquent, the Board of Directors, in its sole discretion, may take any or all of the following actions:

- (a) Assess a late charge for each Delinquency in an amount established by the Board of Directors;
- (b) Assess an interest charge from the date of delinquency of one and one-half percent (1 ½%) per month (18% APR) for each month, or portion thereof until paid in full, or such other rate as the Board of Directors may establish, but in no event a rate that is usurious under Missouri law;
- (c) Suspend the voting rights and other privileges of the Owner during any period of a Delinquency;
- (d) Bring an action at law against any Owner personally obligated to pay the Delinquency;
- (e) File a statement of lien with respect to the Townhome Lot; and
- (f) Proceed with foreclosure of liens for the Delinquency.

Each Delinquency (which, as defined above, includes any unpaid Monthly Townhome, Special Townhome or Default Assessment, Fine or Lien Fee) shall constitute a lien on the Townhome Lot, including the Townhome thereon and any other Improvements, and shall attach on the due date for the Delinquency. Such lien shall also secure all late charges, interest and costs of collection, including reasonable attorneys' fees. After first giving the applicable Owner of the Townhome Lot at least ten (10) days' written notice of the Delinquency and intent to assert a lien, the Association may evidence the lien by filing a certificate of lien with the Office of the

Recorder of Deeds for Platte County, Missouri. The certificate of lien, which shall be signed and acknowledged by the President, any Vice President or the Secretary of the Association, or on behalf of the Association by any Manager appointed by it, shall set forth (i) the name and address of the Association, (ii) the amount of the Delinquency, (iii) the amount of accrued interest, penalty and other amounts due, (iv) the name of the Owner of the Townhome Lot and (v) the legal description of the Townhome Lot. Simultaneously with its filing thereof, the Association or its Manager shall mail a copy of the certificate of lien to the Owner at the address of the Townhome Lot or to such other address as the Association has in its files for the Owner. At any time thirty (30) or more days after filing the certificate of lien, the Association may institute foreclosure proceedings against the affected Townhome Lot in the manner for foreclosing a deed of trust by private sale on real property under the laws of the State of Missouri and recover the amounts of all unpaid Delinquencies, all penalties, late charges and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien and all reasonable attorneys' fees and expenses incurred in connection with the enforcement of the lien, including foreclosure. The Association shall have the power to bid on a Townhome Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. All liens for Delinquencies shall continue for a period of five (5) years from the date of attachment and no longer, unless within such time suit is commenced to collect the Delinquency against persons personally liable for such amount or foreclosure proceedings are instituted. In such cases the lien shall continue until termination of the suit and sale of the Townhome Lot upon execution of any judgment obtained or until completion of foreclosure proceedings.

6.8. **Personal Obligation.** The amount of any Delinquency chargeable against any Townhome Lot shall be a personal and individual debt of the Owner of the Townhome Lot at the time the Assessment became due. No Owner may exempt himself from liability for the Delinquency by abandonment of his Townhome Lot or by waiver of the use or enjoyment of all, or any part of, the Common Areas. All successors to the fee simple title of a Townhome Lot shall be jointly and severally liable for all unpaid Delinquencies, interest, late charges, penalties, costs, expenses and reasonable attorneys' fees against such Townhome Lot with the Owner who owned the Townhome Lot at the time the unpaid Delinquency first became due. Nothing contained herein shall prejudice any such successor's rights to recover from any prior Owner amounts paid by such successor. The liability of a successor shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Townhome Lot. The successor may rely on the statement of status of Delinquencies by, or on behalf of, the Association under Article 6.11 below. The Association may bring suit against the Owner or any successor to recover unpaid Delinquencies any penalties and interest thereon, the cost and expenses of such proceedings and, if allowed by law, all reasonable attorneys' fees and expenses in connection therewith, without foreclosing or waiving the Delinquency lien provided in this Declaration.

6.9. **Priority of Lien.** The lien for Delinquencies provided for in this Declaration shall be subordinate to (a) liens for real estate taxes and special governmental assessments and (b) Mortgages recorded prior to the due date for any such Delinquency. Except as specifically set forth herein or provided by law, no sale or transfer of a Townhome Lot shall release it from the lien of any Delinquency. The amount of any extinguished lien for a Delinquency may, at the direction of the Board of Directors, be reallocated and assessed to all Townhome Lots as a Common Expense.

6.10. **Notice of Mortgagee.** Upon written notice by a Mortgagee to the Association of a Mortgage and written request for notice of unpaid Delinquencies, the Association shall report to the Mortgagee all Delinquencies remaining unpaid for longer than sixty (60) days after the due date. Any Mortgagee holding a lien on a Townhome Lot may pay any unpaid Delinquency, together with all costs and expenses incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Townhome Lot for the amounts paid with the same priority as the lien of the Mortgage.

6.11. **Statement of Status.** Upon written request of any prospective Mortgagee or purchaser of a Townhome Lot and payment of a reasonable fee established by the Board of Directors, the Board of Directors of the Association shall issue a written statement setting forth the amount of all unpaid Delinquencies, if any, with respect to such Townhome Lot. The amount set forth on such statement from the Association shall be binding on the Association if the prospective purchaser purchases the Townhome Lot; provided, however, the Owner of the Townhome Lot during the time when such Delinquency became due and owing shall remain liable for all unpaid Delinquencies. If the Association does not issue a written statement within thirty (30) days of its receipt of the request and fee payment, the prospective purchaser may make an additional written request. If the Association does not issue a written statement within ten (10) days of the second request, the lien for the unpaid Delinquencies shall be released automatically upon the prospective purchaser's acquisition of the Townhome Lot. A statement shall be deemed issued by the Association upon deposit in the U.S. Mail or tender of delivery to the prospective purchaser.

6.12. **Notification of Association's Address.** The Association shall notify each Owner, at their address listed with the Association, of the Association's address, and all changes thereto, where payments shall be made and other Association business may be conducted.

6.13. **Pledge of Assessment Rights as Security.** The Association shall have the power to pledge the right to exercise its assessment powers and rights as security for any obligations of the Association; provided, however, any such action shall require, prior to the Turnover Date, the assent of the Developer and, after the Turnover Date, a majority vote of all Members of the Association. Such power shall include the ability to make an assignment of Assessments then payable to, or which will become payable to, the Association, which assignment may be then presently effective but allows such Assessments to continue to be paid to the Association and used by it unless and until the Association shall default on its obligation secured by the assignment.

6.14. **Optional Developer Loans to Association.** In the event that, at any time or from time to time, the Assessments (including the Monthly Townhome Assessments and the Special Townhome Assessments) and the Working Capital Fund Contributions are not sufficient for the Association to pay all Common Expenses or otherwise permit the Association to perform its duties and obligations under this Declaration, the Developer may (but shall not be obligated to) make loans or advances to the Association to enable it to meet such deficiency or deficiencies in funding. Any such loan or advance made by the Developer to the Association shall bear simple interest at a per annum rate equal to two percent (2%) above the prime rate of interest shown in

the *Money Rates* section of *The Wall Street Journal* on the date such loan or advance is made and shall accrue until the loan or advance, with accrued interest, is paid in full. As soon as reasonably practicable, the Board of Directors shall increase the Assessments in amounts sufficient to pay off the principal and interest of such loans or advances made by the Developer to the Association.

ARTICLE 7 INSURANCE LOSS; CONDEMNATION

7.1. **Association as Attorney-in-Fact.** Each Owner hereby appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any damage or other loss in connection with the Common Area which is covered by insurance written in the name of the Association or a complete or partial taking of the Common Area in condemnation. Each Owner also hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any damage or other loss in connection with the Townhomes or the Restricted Common Areas which is covered by insurance written in the name of the Association or a complete or partial taking of the Restricted Common Areas in condemnation. Acceptance by a grantee of a deed or other instrument of conveyance from the Developer or any other Owner conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact for such purposes. The Association shall have full authorization, right and power to make, execute and deliver any contract, assignment, deed, waiver, settlement or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted hereby to the Association as attorney-in-fact.

7.2. **Repair of Damaged Townhomes.** In the event of damage to or destruction of all or part of any Townhome covered by insurance written in the name of the Association pursuant to Article 4.3 above, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property including, without limitation, any damaged Townhomes and the fixtures and appliances initially installed therein by or for the Owners thereof, any replacements thereof installed by such Owners up to the value of those initially installed by or for them, but not including any furniture, furnishings, fixtures, equipment or other personal property supplied or installed by such Owners in the Townhomes unless covered by insurance obtained by the Association (the "**Association Insured Property**"). Notwithstanding the foregoing, each Owner shall have the right to supervise the redecorating of all but the exterior maintenance area of such Owner's Townhome, as applicable. The following shall apply in such event:

- (a) As soon as practicable after an event causing damage to or destruction of any part of the Association Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction", as used in this Article 7.2, shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage or destruction to the Association Insured Property and no consent or other action by any Owner shall be necessary. Assessments and Fines of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction.

(c) The proceeds received by the Association from any casualty or hazard insurance carried by the Association shall be used for the purpose of repair, replacement and reconstruction of the Association Insured Property.

(d) The insurance proceeds held by the Association, and the amounts received from any Special Townhome Assessments provided for below, constitute a fund for the payment of the costs of repair and reconstruction after casualty.

(e) It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds and the balance from the Special Townhome Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as a Special Townhome Assessment, then in equal shares per Townhome Lot, first to the Mortgagees and then to the Owners, as their respective interests appear.

7.3. Repair of Damaged Common Area or Restricted Common Areas. Except as provided herein to the contrary, the Association shall use the proceeds of all insurance for the Common Area or the Restricted Common Areas to repair or replace any part of the Common Area or the Restricted Common Areas, having a fair market value of more than \$5,000.00, damaged by an insured occurrence.

7.4. Special Townhome Assessment if Insurance Proceeds Insufficient. If the insurance proceeds are insufficient to pay the costs of repair or replacement as set forth in Articles 7.2 and/or 7.3 above, the Association may, pursuant to Article 6.3 above, levy, assess and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Townhome Assessment sufficient to provide funds to pay the additional cost of such repair or replacement. If the aggregate of any Special Townhome Assessment for expenses relating to such repair or replacement exceeds \$5,000.00 with respect to the Common Area or \$50,000 with respect to Townhomes or the related Restricted Common Areas, then the Special Townhome Assessment may be made only upon (i) prior to the Turnover Date, approval of the Developer, and (ii) after the Turnover Date, approval of the Board of Directors and approval of the Developer if it then still owns a Townhome Lot. Further levies may be made in like manner if the amounts collected prove insufficient to complete any such repair or replacement.

7.5. **Condemnation.** Except as provided herein, if any portion of the Common Area or Restricted Common Areas on which Improvements have been constructed is taken by any condemnation or similar proceeding, the Association shall restore or replace such Improvements on the remaining land included in the Common Area or Restricted Common Areas. If the condemnation award is insufficient to pay the costs of restoring or replacing the taken Improvement, the Association may, pursuant to Article 6.3 above, levy, assess and collect in advance from the Owners, without the necessity of a special vote of such Owners, a Special Townhome Assessment sufficient to provide funds to pay the additional cost of such restoration or replacement. If the aggregate of any Special Townhome Assessment for expenses relating to such restoration or replacement exceeds \$10,000.00, then such Special Townhome Assessments may be made only upon (i) prior to the Turnover Date, approval of the Developer and (ii) after the Turnover Date, approval of a majority of the votes possible to be cast under this Declaration and approval of the Developer if it then owns a Townhome Lot. Further levies may be made in like manner if the amounts collected prove insufficient to complete such restoration or replacement.

7.6. **Decision Not to Rebuild or Replace.** Prior to the Turnover Date, if the Developer decides, and after the Turnover Date, if Owners representing at least sixty-six and two-thirds percent (66 2/3%) of the votes possible to be cast under this Declaration agree by vote at a meeting or in writing, not to repair or replace any part of the Common Areas damaged by an insured occurrence and do not authorize alternative improvements to such part of the Common Area, the damaged property shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. Prior to the Turnover Date, the Developer and, after the Turnover Date, Owners representing at least sixty-six and two-thirds percent (66 2/3%) of the votes possible to be cast under this Declaration may elect not to restore or replace any improvements comprising a part of the Common Area taken by condemnation. In either case, the Board of Directors shall, in its sole discretion, either retain all unused insurance proceeds or condemnation awards (or any awards in excess of the cost of restoring or replacing the taken improvements) in reserve or distribute such proceeds to the Owners in accordance with each Owner's Proportionate Share.

ARTICLE 8 TOWNHOME MAINTENANCE SERVICES TO BE PROVIDED BY THE ASSOCIATION

8.1. **General.** Subject to the provisions of Article 9 below, in addition to the maintenance upon the Common Areas provided for elsewhere in this Declaration, and as allowed or required by the Association under this Declaration, the Association shall provide (or arrange for provision of) the following services to each Townhome and the Townhome Lot on which it is located, which is subject to the Monthly Townhome Assessment hereunder in as nearly a uniform manner as may be reasonably possible, and each Townhome Owner shall be obligated to accept and participate in the Association's provisions of such services by such Owner's acceptance of a deed to such Owner's Townhome Lot.

8.2. **Exterior Maintenance.** The Association shall provide exterior maintenance upon each Townhome which is subject to the Monthly Townhome Assessments hereunder, as

follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces and other exterior Improvements. The foregoing shall not include any responsibility on behalf of the Association to repair or replace exterior building surfaces or foundations arising or resulting from: (i) a Townhome Owner's failure to properly and adequately provide routine general maintenance and protection from the elements or other care to such Owner's Townhome; or (ii) fire, windstorm, vandalism or other casualty loss covered by fire and extended coverage loss provisions of a standard form of homeowner's insurance policy. Such exterior maintenance shall not include driveways, sidewalks, decks or patios, glass surfaces, windows, window frames, window hardware, screens, light bulbs, garage doors or doors (which shall be each such Owner's responsibility as set forth in Article 8.7). No change in the color of the exterior surfaces of any Townhome or any vinyl deck railing, screen or fence between the Townhomes shall be made by the Association or any Owner from the original colors used without such change being first considered and recommended by the Review Committee. Prior to the Turnover Date, the Developer must approve any such recommendations. After the Turnover Date, such recommendations shall be submitted to membership for acceptance, which acceptance shall require a vote of sixty-six and two-thirds percent (66 2/3%) of the Members of the Association present at a meeting called to consider such proposal at which a quorum is present.

8.3. **Lawn and Landscaping Care; Snow Clearing.** The Association shall provide lawn and landscaping care consisting of mowing, edging, fertilizing, weed control and reseeding of all grass areas and trimming and replacing of trees, bushes, shrubbery and plantings on the Townhome Lots and the related Restricted Common Areas (other than those which are a Townhome Lot Owner's responsibility as set forth in Article 8.2 above). The Association also shall provide for snow clearing from the Streets (and related easements or public streets if approved by the Board of Directors).

8.4. **Townhome Owner's Responsibility for Sewer Lines.** Each Townhome Owner shall be responsible for the maintenance, repair and replacement of the sewer line from the Townhome to the public sewer system, including any collectors, and is hereby granted an easement across that portion of the Common Area or the related Restricted Common Areas in which such sewer line or any collector is located for such purpose.

8.5. **Uniformity of Service.** The Association shall arrange and provide for a uniform method of providing the foregoing services to the Townhomes. The Association shall have authority to determine the exact method of providing for such services by virtue of the powers set forth in Article 4 of this Declaration and, toward that end, shall have authority to contract with one or more providers of such services on behalf of all the Townhome Owners to provide such services to the Townhomes within the Subdivision.

8.6. **Exclusivity.** No Townhome Owner shall do any act or take any action on such Owner's part which shall interfere or conflict with the Association's sole responsibility to provide the services set forth herein, and particularly shall not seek to provide such services to such Owner's own Townhome unless the Association fails to provide such service, after written notice to the Association demanding such services be reasonably provided, to the Townhome Owner who can establish such services are not being provided to such Owner's Townhome, in a uniform manner with the other Townhomes within the Subdivision.

8.7. **Townhome Owner's Responsibility for Driveways, Sidewalks, Patios and Decks.** Anything contained above to the contrary notwithstanding, each Owner of a Townhome shall be responsible for using due care in the usage and utilization of and for the repair and replacement of any driveway and/or sidewalk or other Restricted Common Area dedicated to such Owner's Townhome. The repair of any damage or destruction caused to or the replacement of any such driveway or sidewalk, for any cause or any reason, shall be the responsibility of such Owner, and if such Owner fails to do so, the Association shall be authorized to repair such damage or to make any necessary replacement at the cost and expense of such Owner and to collect the same, together with all other costs and expenses of the Association associated with the enforcement of the Association's rights hereunder. If, in the course of installing, maintaining or repairing Improvements located within the Restricted Common Area, Townhome Owner, or such Owner's contractor, agent or employee, damages, destroys or harms any Improvement located within the Common Area or the Restricted Common Area, it shall be such Owner's responsibility to repair, renovate or correct any such damage, destruction or harm. For a avoidance of doubt, each Townhome Owner also is responsible for all maintenance, repair and replacement of any patio or deck pertaining to such Owner's Townhome and the Association shall have no responsibility therefor.

ARTICLE 9 TOWNHOME PARTY WALLS AND RELATED MATTERS

9.1. **Boundary Line Between Townhomes.** The boundary line between two (2) Townhomes shall be deemed to be the center line of the airspace between the exterior walls of the two (2) Townhomes which abut such airspace (the "**Party Walls**") or, if there is no such airspace, where the Party Walls abut, notwithstanding the fact that the common boundary line for the Townhome Lots may not be located precisely upon said center line of the Party Walls. The Owner of each Townhome Lot from time to time shall have the full rights of ownership, use and occupancy of the Townhome located primarily upon such Townhome Lot and the Owner of one (1) Townhome shall not have any right, title or interest in any part of the other Townhome located primarily upon the adjacent Townhome Lot.

9.2. **Repair and Maintenance of Party Walls.** Subject to the provisions of Articles 9.5 and 9.6 below, the Owners of the Townhomes from time to time shall, at their respective sole cost and expense, make all repairs and perform all maintenance required upon the surface and non-structural elements of the portion of the Party Walls which serves as an interior/exterior wall of the Townhome owned by such Owner; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one (1) Townhome Owner (or such Owner's tenants, agents, employees, guests or invitees), then, subject to the provisions of Article 9.6 below, such repairs and maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance.

9.3. **Repairs and Maintenance of Utilities in and Structural Elements of Party Walls.** Subject to the provisions of Articles 9.5 and 9.6 below, the Owners of the Townhomes

from time to time shall make or cause to be made all repairs and maintenance to all utilities to the extent common to such Townhomes including, but not limited to, sewer, water and electrical utilities and to the structural elements of such Owner's portion of the Party Walls, with the cost of any such common repairs or maintenance to be paid equally by each applicable Owner; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one (1) Owner (or such Owner's tenants, agents, employees, guests or invitees), or they are applicable only to one (1) Owner's portion of the Party Walls, then, subject to the provisions of Article 9.6 below, such repairs and maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance or whose portion is affected.

9.4. **Repairs/Maintenance in Compliance with Laws.** Any and all repairs and maintenance which a Townhome Owner, or all Townhome Owners jointly, shall be required to perform hereunder or shall elect to perform shall be done in a good and workmanlike manner and in full compliance with all laws, ordinances, statutes, rules and regulations of any Federal, State, County or local government or governmental agency or authority. Any such repairs and maintenance, once commenced, shall thereafter be diligently pursued to completion. Each such Owner shall have a reciprocal easement across the other applicable Owner's Townhome Lot to allow reasonable access for the purpose of making inspections and performing any maintenance or repairs. Such easement rights shall be exercised in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the other Owner's

9.5. **Insurance.** The casualty and property damage insurance required to be carried by the Association as set forth in Article 4.3 above shall expressly cover casualty damage or destruction of the Party Walls.

9.6. **Waiver of Liability.** Notwithstanding anything to the contrary herein, each Owner of a Townhome hereby releases the Association, the Developer, the other applicable Townhome Owner(s) and their respective tenants, agents, employees, guests or invitees from all liability for damage due to any act or neglect of the Association, the Developer, such other Owners or their respective tenants, agents, employees, guests or invitees (except as herein provided) occurring to the Townhome which is or might be incident to or the result of a fire or any other casualty which is or would be covered by the casualty insurance policy described in Article 4.3 above or which is covered by any other insurance policy actually maintained by such Owner or such Owner's tenants or other occupants; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful act or omission of any such Owner.

9.7. **Limitation on Alterations to Party Walls.** No Owner of a Townhome shall have the right, except with the prior written consent of the other applicable Townhome Owner(s), to (i) make any alterations or additions to any Party Wall or any part thereof, except non-structural, interior alterations made within the living unit of such Owner's Townhome, or (ii) take any action which will adversely affect the structural integrity or sound transmission prevention qualities of the Party Walls. To the extent any such Owner shall make any alterations or

additions to the Party Walls, (a) such Owner shall, at such Owner's sole cost and expense, keep and maintain such alterations or additions in good condition and repair and (b) in the event of any fire or other casualty, the restoration and repair of such alterations or additions shall be at the sole cost and expense of such Owner.

9.8. **Exterior of Party Walls – Colors and Materials.** The exterior portions of any Party Wall visible outside a Townhome shall be of the same color and/or materials as the exterior walls thereof or only such other colors and/or materials as are approved in advance by the Review Committee.

9.9. **Lien Rights.** Should a Townhome Owner fail or refuse to pay any costs or expenses as provided in this Article 9, the non-defaulting adjacent Owner(s) shall be entitled to a lien on the Townhome Lot of the Owner so failing or refusing to pay to the extent of such costs or expenses. Payment of such costs or expenses may be enforced as a mechanic's lien on such Townhome Lot through proceedings in any court in Platte County, Missouri, having jurisdiction of suits for the enforcement of such liens. Such non-defaulting Owner(s) may also file a certificate of nonpayment of such costs or expenses against the defaulting Owner's Townhome Lot in the office of the Recorder of Deeds for Platte County, Missouri. Such liens shall continue for a period of five (5) years from the date of nonpayment of the costs or expenses, unless suit shall have been instituted for collection of the costs or expenses, in which case the lien shall continue until payment in full of such costs or expenses or termination of the suit against the defaulting party.

9.10. **State Law Governs.** To the extent not inconsistent with the provisions of this Article 9, the laws of the State of Missouri regarding the Party Walls shall be applicable with respect to each Party Wall.

ARTICLE 10 ARCHITECTURAL CONTROL AND CONSTRUCTION STANDARDS

10.1. **Architectural Review Committee.** An Architectural Review Committee (the "**Review Committee**"), consisting of three (3) or more persons, shall be established to exercise the powers granted by this Article 10. At all times prior to the Turnover Date, the Developer shall have the power to appoint all members of the Review Committee, who shall serve until they resign or are removed by the Developer. After the Turnover Date, the Board of Directors shall appoint the members of the Review Committee, who shall serve terms of one (1) year or until their earlier resignation or removal by the Board of Directors. All decisions of the Review Committee shall be made by a majority of its members.

10.2. **Architectural Control.** To preserve the harmony of the construction, location and exterior design and appearance of the Townhome Lots, the Townhomes and other Improvements on the Townhome Lots, (a) all Townhomes, buildings, walls, fences, structures and other appurtenances or Improvements of any kind to be constructed or located on any Townhome Lot (collectively, the "**Improvements**"), (b) all additions, changes and alterations to any Improvement which impacts its exterior design or appearance and (c) all changes to the topography of any Townhome Lot (collectively, the "**Proposed Construction**"), shall be

approved, in writing, by the Review Committee before such Proposed Construction is commenced. Except as provided in Article 10.4 hereof, the Review Committee shall not approve any Proposed Construction which does not fully comply with the requirements hereof including, without limitation, Article 10.5 below, or where the exterior design or appearance (including exterior color) of the Proposed Construction is not, in the sole discretion of the Review Committee, in harmony with the existing Townhomes in the Subdivision, the topography and overall design and appearance of the Subdivision, the Developer's intended design and appearance of the Subdivision or otherwise detracts from the design and appearance of the Subdivision in the sole opinion of the Review Committee.

10.3. **Application for Approval.** The Owner shall apply, in writing, to the Review Committee for approval of all Proposed Construction. The application shall include plans, drawings, specifications and information (including all construction drawings and site plans) showing, as and if applicable, (a) the front, rear and side elevations, (b) proposed grading and drainage from the Townhome Lot, (c) floor plan with total square footage, (d) height of all Improvements, (e) exterior materials, (f) method of construction, (g) exterior color scheme, including samples, manufacturers name and product numbers: (h) landscaping and (i) all other information reasonably required by the Review Committee. The Review Committee may request additional information from an Owner at any time within thirty (30) days after its last receipt of information from the Owner or his or her representatives. The Review Committee may establish and publish such other rules and regulations regarding approval of Proposed Construction as the Review Committee determines are reasonable. If the Review Committee does not act upon an Owner's application within thirty (30) days after submission of all information required by the Review Committee, approval of the Proposed Construction as submitted shall be deemed to have been given and the requirements of this Article 10.3 fully satisfied. The provisions of this Article 10.3 shall not be construed or interpreted to imply any ability of an Owner to modify, alter, change or otherwise improve the exterior of any Townhome.

10.4. **Modification of Requirements; Appeal of Review Committee Decision.** Except as specifically provided herein to the contrary, by unanimous decision, the Review Committee may, for good cause shown, waive any of the requirements set forth herein, including those set forth in Article 10.5 hereof. Any waiver granted shall not be effective and may not be acted upon until eleven (11) days after the date on which the Review Committee renders its decision. The Owner submitting an application may appeal any decision of the Review Committee which denies that application for Proposed Construction. An Owner of any Townhome Lot may appeal any decision of the Review Committee which waives any of the requirements set forth herein. All appeals shall be to the full Board of Directors. All appeals to the Board of Directors shall be made in writing and submitted to the Secretary of the Association within ten (10) days after the Review Committee renders its decision which is the subject of the appeal. If the Board of Directors does not act upon an appeal within sixty (60) days of it being timely submitted, the relief requested in the appeal shall be deemed granted. In deciding an appeal, the Board of Directors can take only such actions as the Review Committee was originally empowered to take. All decisions on appeals shall be made by a majority of the Board of Directors, acting in the sole discretion of the members of the Board, and shall be final and not subject to further appeal, including to the Owners, or subject to judicial review. Pending final decision on appeal, the waiver requested shall be held in abeyance and may not be acted upon.

10.5. **Construction Standards Applicable to Townhomes.** In addition to compliance with all ordinances, codes and restrictions enacted by the City which are applicable to a Townhome Lot, each Townhome constructed on any Townhome Lot shall conform to the following:

(a) Except for model Townhomes, temporary model Townhomes or other sales trailers or centers or as otherwise specifically provided herein, no building other than a Townhome may be constructed on any Townhome Lot. All Townhomes must be constructed on Townhome Lots platted and/or created only for Townhomes. Under no circumstance, even with Review Committee or Board of Director approval, shall any commercial, retail or other business building be constructed on any Townhome Lot which is subject to this Declaration.

(b) All Townhomes shall be erected or located on each Townhome Lot as shown on any Minor Subdivision and any requirements of any City code or regulation. The Review Committee shall approve the orientation of the Townhomes on the Townhome Lots.

(c) The finished floor area of each Townhome shall be at least 1,200 square feet of total finished floor area. For purposes of calculating the foregoing minimum, the area of any attics, porches and any portion thereof that is not enclosed and finished for all-year occupancy, shall not be included. The Review Committee may, in its sole discretion, require greater square footage for any Townhome as a condition of approval of any Proposed Construction.

(d) All exterior surfaces of any Townhome shall be constructed only of wood covered with vinyl siding, stone (on a portion of each Townhome as prescribed by the Review Committee) or such other materials as approved by the Review Committee or a combination of the foregoing materials, and be of a color or colors required by the Review Committee, which colors may not be changed by any Owner. The Review Committee may limit use of vinyl siding to only certain Townhomes in certain areas of the Subdivision.

(e) All Townhomes shall have vinyl or aluminum windows and may have aluminum or other metal storm windows and screens.

(f) All Townhomes shall be roofed with a minimum of a 30-year composition roof or such other materials as shall be allowed by the Review Committee.

(g) During construction, no Townhome or any addition to or remodeling thereof shall stand with an unfinished exterior for longer than six (6) months.

(h) All water, gas, electricity, sewer, telephone, cable television and other utilities or services shall be located and run underground on or to each Townhome Lot.

(i) All driveways shall be constructed of asphalt or concrete. No rock or gravel driveways shall be permitted. Each Owner of a Townhome shall maintain such Owner's driveway in good condition and replace the same when necessary. No driveway may be constructed in a manner which permits an additional vehicle to be parked on such driveway without impeding the direct access of any other vehicle to any portion of the garage, any such determination to be made in the sole discretion of the Review Committee.

(j) Unless otherwise approved by the Review Committee, each Townhome shall have a garage for no less than one (1) vehicle and the walls of such garage shall be finished in a quality manner.

(k) No vegetable or herb gardens shall be permitted except within an area five feet (5') from the rear of a Townhome and flower gardens shall be permitted only within five feet (5') of the foundation in the front, rear or on any side thereof.

(l) No sport court nor any playground equipment may be installed or used on any Townhome Lots, unless approved by the Review Committee.

(m) No fencing of any type shall be erected or installed on the Common Area or the Restricted Common Areas by an Owner.

(n) In the event of any conflict between the provisions of this Article 10.5 and/or other provisions of this Declaration, the provisions of this Article 10.5 shall control.

ARTICLE 11 USE RESTRICTIONS

11.1. **General.** Unless the Board of Directors, acting in its sole discretion, unanimously waives the application thereof (which waiver may not be granted if contrary to any specific prohibition set forth herein), the following restrictions are hereby placed on the Property.

11.2. **Townhome Use Only.** Except as specifically provided herein, each Townhome shall be used strictly as a family dwelling. No business shall be conducted, or carried on, in or from any Townhome Lot or Townhome except: (a) marketing or sales activities by the Developer, or its agents, and builders authorized to have model Townhomes may be conducted from model Townhomes or sales trailers and (b) with the approval of the Review Committee, conduct of a profession or home industry which does not involve: (i) employees working at the Townhome who are not permanently residing therein and (ii) customers regularly visiting to conduct business.

11.3. **Prohibited Buildings and Structures.** Except as provided below, tent, shack, bam, storage or utility shed, gazebo, permanent cooking grill or oven or other outbuilding or

structure shall be constructed or located on any Townhome Lot, Common Area or Restricted Common Areas at any time.

11.4. **Mail Boxes.** If mail delivery via centralized boxes is available, no other mailboxes shall be located on the Townhome Lots. If such centralized mail delivery is unavailable, the Review Committee shall approve the design, appearance and location of all mailboxes erected or located on any Townhome Lot.

11.5. **Antennas and Other Projections.** No television, radio, citizen's band, short wave or other antenna, satellite dish, solar panel, clothesline, pole, flagpole, ornamental light fixtures or other unsightly projection shall be visible from the exterior of any Townhome, including any such item attached thereto or located in a yard, the Restricted Common Areas or the Common Area. The Review Committee may, in its sole discretion, approve satellite dishes which are twenty inches (20") or less in diameter or otherwise in size attached to a Townhome permitted by applicable laws and regulations subject to all conditions which the Review Committee attaches to such approval, including the location and applicable screening of the satellite dish, which conditions shall comply with all applicable laws and regulations. To the extent that this restriction may be inconsistent with the regulations of the Federal Communications Commission (the "FCC"), as amended from time to time, this restriction shall be deemed modified to the extent necessary to comply with such FCC regulations and still provide such limitations as are consistent with the intent of this restriction.

11.6. **Garages.** No garage may be improved for use as living area. All doors of garages of Townhomes which are visible from the curb shall be kept closed except when removing motor vehicles or other items from, or the cleaning of, such garage.

11.7. **Holiday Decorations.** Christmas and other holiday lights and decorations may be displayed on the exterior of a Townhome only during the period beginning forty-five (45) days prior to and ending twenty-one (21) days after such holiday and they must be removed at the expiration of such period. The method and means of installation of such lights and decorations shall be only as established or permitted by the Review Committee.

11.8. **Storage Tanks.** No tank for storage of oil or other product may be maintained in any Townhome garage or on any Townhome Lot, whether above or below the surface of the ground.

11.9. **Refuse.** No trash, ashes or other refuse may be thrown, dumped, stored or burned on any Townhome Lot, the Common Area or any of the Restricted Common Areas, except during construction of a Townhome or any addition thereto or remodeling thereof. The storage or burning of trash, garbage, old appliances, junk or other refuse is prohibited on the Property outside of a Townhome, except such items may be set out for collection after 6:00 p.m. on the day before the scheduled collection day. If there is an alley in the rear of a Townhome, such items set out for collection shall be placed along such alley.

11.10. **Signs; Advertising.** Except as provided below, no signs, billboards or advertising structures of any kind may be placed on any Townhome Lot or in or on any Townhome or be

visible from the interior of any Townhome or building on the Townhome Lot. Signs advertising the sale of an individual Townhome Lot, which do not exceed six (6) square feet in size, may be erected or placed on the Townhome Lot (or in the Common Area nearest such Townhome Lot) being sold or leased. For the avoid of doubt, signs advertising the lease of an individual Townhome Lot are not permitted without the prior written consent of the Review Committee. The Developer may erect or place signs related to the Subdivision on any Townhome Lot owned by it or on any Common Area or Restricted Common Areas.

11.11. **Nuisances.** No activity shall be carried on in, on or from any Townhome Lot or Townhome which is noxious or offensive or an annoyance or nuisance to the neighborhood. The Owner shall be responsible for all activity carried on in, on or from a Townhome Lot or a Townhome whether or not the Owner is involved in, or has knowledge of, such activity.

11.12. **Animals.** At no time shall pit bulls, animals with vicious propensities by breed, bees, cows, horses, swine, goats, sheep, poultry, other domesticated farm animals, undomesticated (wild) animals, exotic animals or animals requiring special permits from the State of Missouri or United States of America be kept at any time in any Townhome or on any Townhome Lot or in any Restricted Common Areas or the Common Area. Except as otherwise prohibited herein, dogs, cats and other household pets (i) may be kept ill a Townhome (provided such pets are not kept for breeding or other commercial purposes), (ii) are limited to no more than two (2) in total number and (iii) the keeping of such pets does not create any unsanitary condition. Doghouses or similar animal shelters shall be located for a Townhome on a patio or deck in the back thereof and shall only be of such size, design and materials as approved in advance by the Review Committee and painted the same color as the main structure. Kennels and dog runs are not permitted on any Townhome Lot.

11.13. **Vehicles.** Except as provided below, no boats or motor vehicles, including automobiles, buses, campers, trailers, recreational vehicles, tractors, semi-tractors, semi-trailers, trucks or motorcycles, may be parked, stored or kept on any Townhome Lot, Common Area or Restricted Common Areas (including driveways) except in an enclosed garage. However, one (1) passenger vehicle (i.e. automobile or pickup truck not larger than 3/4 tons) in operable, drivable condition may be parked on a driveway at any time. Any other passenger vehicles, trucks, recreational trailers, campers, motorcycles and recreational vehicles not exceeding twenty (20) feet in total length which are owned by a person not permanently residing in a Townhome on the Townhome Lot may be parked in the driveway or at the curb but for no more than twenty-four (24) consecutive hours and during no more than any portion of seven (7) out of fourteen (14) consecutive days. No major repair work shall be performed on any vehicle or boat while parked on the driveway or in the yard outside the garage or on any Street or on any portion of the Common Area or the Restricted Common Areas. All vehicles that are not drivable, whose presence makes an unsightly appearance or create a nuisance or that are a hazard to life, health or public safety, shall not be parked or kept on any driveway, yard, Common Area, Restricted Common Areas or at the curb for more than twenty-four (24) consecutive hours.

11.14. **Occupancy; Repair.** No Townhome shall be occupied until it is fully completed, except for exterior painting and minor details. In the event of fire, windstorm or other damage, no Townhome shall be permitted to remain in a damaged condition longer than three (3) months.

11.15. **Storage of Construction Materials.** No building material of any kind or character shall be placed or stored on any Townhome Lot, the Common Area or the Restricted Common Areas until the Owner thereof has received required approval from the Review Committee for the project and is ready to commence construction. All material permitted to be stored on a Townhome Lot shall be placed only within the property lines of the Townhome Lot or Townhome Lots upon which the approved Improvements are to be constructed or on portions of the Common Area or Restricted Common Areas approved in advance by the Review Committee.

11.16. **Landscaping Easement.** Except as permitted by the Review Committee or elsewhere herein, no Improvement or personal property of any Owner shall be located in any Restricted Common Areas or the Common Area.

11.17. **Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat or plats of the Subdivision or by separate recorded instruments. No structure, except driveways, paved areas and approved fences, may be placed or permitted to remain within any utility easement which interferes with the construction or reconstruction and the proper, safe and continuous maintenance of such utility easement. No structure, planting or other material shall be placed or permitted to remain on any drainage easements which (a) damages or interferes with the installation, use or maintenance of the easement, (b) changes the direction of flow of drainage channels in the easements, (c) obstructs or retards the flow of water through drainage channels or its collection in detention ponds or basins in the easements. The Association also is hereby granted an easement to go on and, if necessary, maintain or replace, any shrubs or other plantings, located on the Townhome Lots therefor if the Owners fail to maintain the same and charge such Owner for the costs thereof.

11.18. **No Subdividing.** No Townhome Lot may be subdivided.

11.19. **No Mining Activities.** No portion of the Property shall be used; at any time, for mining, boring, quarrying, drilling, refining or other operations involving, or related to, the extraction or exploitation of any subsurface natural resource of any kind. The prohibitions of this Article 11.21 may not, under any circumstances, be waived or amended by the Review Committee, the Board of Directors, the Owners or Members.

11.20. **No Hunting, Firearms or Archery Use Permitted.** No hunting or use of air rifles, air pistols, firearms, bows, crossbows, arrows or bolts or other archery equipment, spears, blowguns or similar devices shall be permitted or conducted by any Owner, or by any Owner's guests, tenants or invitees, at any time on any Townhome Lot or any other portion of the Subdivision or the Property, including the Common Area and the Restricted Common Areas.

15.1. **Leasing.** An Owner may rent a Townhome for a term of six (6) months or more, subject to all the terms hereof, including those prohibiting the use thereof for commercial purposes. Rentals of Townhomes for periods of time less than six (6) months are not permitted.

ARTICLE 12

DEDICATION AND USE OF STREETS, COMMON AREA AND RESTRICTED COMMON AREAS

12.1. **Streets.** The Streets are shown on plats for the Subdivision. All Streets shall be used only for their intended purposes as free and clear roadways for ingress and egress purposes and no Owner of any Townhome Lot shall block passage, damage or abuse any Street. If any Streets are dedicated to the City, no work is permitted thereon without the prior approval of the City.

12.2. **Common Area and Restricted Common Areas.** To the extent not previously dedicated, the Developer hereby dedicates the Common Area to the Association. The Developer will convey to the Association, by special warranty deed, the Common Area in their then present condition, upon the completion of the initial construction of any facilities or Improvements on any Common Area or Restricted Common Areas. Thereafter, the Developer shall have no further responsibility or obligation of any kind with respect to such Common Area or Restricted Common Areas. The Common Area and the Restricted Common Areas shall be used only for their intended purposes.

12.3. **Maintenance of Common Area and Restricted Common Areas.** Except as otherwise specifically provided herein (including Articles 8.4 and 8.7 above), the Association shall maintain, manage, operate, replace, repair and improve all Common Area, including all Improvements thereon. Any Owner damaging or abusing the Common Area shall be responsible to the Association for all costs and expenses incurred by it to repair such damage, including full replacement of the damaged property. The Association may contract with a Manager or third parties to carry out all activities permitted by this Article 12.3.

12.4. **Recreational Facility.** EACH OWNER, (ON ITS OWN BEHALF AND ON BEHALF OF SUCH OWNER'S FAMILY, GUESTS, TENANTS AND INVITEES) AS A CONDITION TO USING THE RECREATIONAL FACILITY, ACKNOWLEDGES AND AGREES THAT THE RECREATIONAL FACILITY MAY BE UNSUPERVISED AND the ASSOCIATION SHALL NOT, AND SHALL NOT HAVE ANY DUTY TO PROVIDE ANY LIFEGUARDS OR OTHER PERSONNEL TO SUPERVISE THE RECREATIONAL FACILITY, AND THAT ALL SUCH PARTIES SHALL USE THE RECREATIONAL FACILITY AT THEIR OWN RISK. IT IS UNDERSTOOD THAT the ASSOCIATION ASSUMES NO LIABILITY IN ANY REGARD TO ANY USE OF THE RECREATIONAL FACILITY BY ANY OWNER OR ANY OTHER INDIVIDUAL THAT USES THE LICENSE AREAS BY INVITATION OR PERMISSION (EITHER EXPRESS OR IMPLIED) FROM such OWNER. EACH OWNER, (ON ITS OWN BEHALF AND ON BEHALF OF SUCH OWNER'S FAMILY, GUESTS, TENANTS AND INVITEES)) HEREBY RELEASES AND WAIVES ALL CLAIMS AGAINST THE ASSOCIATION (AND ITS OWNERS, OFFICERS, AGENTS AND EMPLOYEES) FOR ANY ACCIDENTS OR OCCURRENCES WHICH ARISE ON OR RESPECTING THE RECREATIONAL FACILITY.

ARTICLE 13 EXPANSION OR REDUCTION OF PROPERTY

13.1. **Reservation of Right to Expand.** By amendment or supplement to this Declaration, the Developer hereby reserves the absolute right to unilaterally expand the Property, from time to time, to include additional Townhome Lots, Common Area, Restricted Common Areas and other property in the Subdivision and other property that has not yet been subdivided or platted (collectively, the "**Expansion Property**").

13.2. **Declaration Operative to Expansion Property.** The addition of Expansion Property shall be done by the Developer filing one or more Supplemental Declarations of record in the Office of the Recorder of Deeds for Platte County, Missouri. Such Supplemental Declaration shall describe the Expansion Property, together with any covenants, conditions, restrictions and easements particular thereto. Expansion Property may be added in stages by successive supplements or in one (1) supplemental expansion. The Expansion Property shall be subject to all of the terms and conditions of this Declaration.

13.3. **Expansion of Definitions.** If the Property included in the Subdivision is expanded as provided in this Article 13, all definitions used in this Declaration shall be automatically expanded to include such additional property. For example, "**Townhome Lot**" shall mean the Townhome Lots described in the existing plats for the Subdivision plus all additional Townhome Lots added by or pursuant to Supplemental Declarations and supplemental plats, and "**Declaration**" shall mean this Declaration as supplemented.

13.4. **Reservation of Right to Remove.** By amendment or supplement to this Declaration, the Developer hereby reserves the absolute right at any time to unilaterally remove from the effect and control of this Declaration any portion of the Property which the Developer has not sold or conveyed, whether platted or unplatted (the "**Removed Property**"). Any such removal shall be by Supplemental Declaration filed of record in the manner set forth above and shall be effective on the date so filed of record. Provided, however, that no platted portion of the Property nor any part thereof not yet platted but subject to a development plan previously approved by the City may be removed without the prior written consent of the City pursuant to Section 16.4 below.

ARTICLE 14 PROPERTY RIGHTS OF OWNERS

14.1. **Owner's Easement of Enjoyment.** Subject to the other terms of this Declaration, every Owner has a non-exclusive right in and easement of enjoyment of the Common Area (exclusive of areas set aside as the Restricted Common Areas), including, without limitation, the right to use the Streets for ingress and egress. Such easement shall be appurtenant to, and pass with, title to every Townhome Lot.

14.2. **Recorded Easements.** The Property shall be subject to all easements as shown on any recorded plat affecting the Property and to all other easements of record, or of use, as of the date this Declaration is recorded or as subsequently granted by the Association over or through the Common Area.

14.3. **Developer's Rights Incident to Construction and Enforcement of Declaration.** The Developer, for itself and its successors and assigns, hereby reserves an easement for construction, utilities, drainage, ingress and egress over, in, upon, under and across the Common Area and the Restricted Common Areas, together with the right to store materials on the Common Area and the Restricted Common Areas, and to make such other use of the Common Area and the Restricted Common Areas as is reasonably necessary or incident to the construction of Townhomes on the Townhome Lots or other Improvements on the Property or other real property owned by the Developer or to permit enforcement of the provisions of this Declaration. The Developer may not exercise the foregoing rights in a way which unreasonably interferes with the occupancy, use, enjoyment or access to the Townhome Lots or the Subdivision by the Owners.

14.4. **Reservation of Easements, Exceptions and Exclusions.** The Developer reserves and hereby grants to the Association the concurrent right to establish, from time to time, by declaration or otherwise, utility and other easements, permits or licenses over the Common Area, for any purpose including, without limitation to Streets, paths, walkways, drainage, recreation areas and parking areas, and to create other reservations, exceptions and exclusions for the best interest of all Owners and the Association. In exercising such right, the Association shall do so in order to serve all the Owners within the Subdivision.

14.5. **Emergency Access Easement.** A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon all Streets and upon the Property in the proper performance of their respective duties. **THE ACCESS EASEMENT ADJACENT TO THE SOUTHERLY BOUNDARY (OVER THE ROAD NOW KNOWN AS NW MILEY DRIVE) IS RESERVED FOR EMERGENCY ACCESS ONLY AND CANNOT BE USED BY ANY OWNER OR THEIR FAMILY, GUESTS, TENANTS, CONTRACTORS, AGENTS AND INVITEES.**

14.6. **View.** No Townhome Owner has any right to an unobstructed view beyond the boundaries of such Owner's Townhome Lot. No Owner shall be entitled to prevent the construction or location of any structure, fence, planting material or other item on or in any other part of the Subdivision, which is permitted by this Declaration, because such structure, fence, planting material or other item obstructs any view from the affected Townhome Lot.

14.7. **Delegation of Use.** Any Townhome Owner may, in accordance with and subject to the limitations of the Association Documents, delegate such Owner's right of enjoyment to the Common Area to the members of the Owner's family, guests, tenants and invitees.

ARTICLE 15 INCIDENTS OF OWNERSHIP IN THE SUBDIVISION

15.2. **Inseparability.** Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Townhome Lot, including the Townhome and other Improvements thereon, shall be presumed to be a gift, devise, bequest, transfer, encumbrance or other conveyance, respectively, of the entire Townhome Lot, including all easements, licenses and all other

appurtenant rights (including rights to the Restricted Common Areas and Improvements therein related thereto) created by law or by this Declaration.

15.3. **No Partition.** The Common Area and the Restricted Common Areas shall be owned by the Association and no Owner, group of Owners or the Association shall bring any action for partition or division of the Common Area or the Restricted Common Areas.

ARTICLE 16 DURATION OF DECLARATION; AMENDMENT

16.1. **Term.** The covenants, conditions, restrictions and easements set forth in this Declaration shall run with and bind the Property until December 31, 2035, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated at the expiration of any such period by a vote of the Members as set forth in Article 16.3 below.

16.2. **Amendment.** Except as otherwise provided herein, at all times prior to the Turnover Date, this Declaration may be amended, altered or modified by a Supplemental Declaration signed by the Developer and, after the Turnover Date, signed by the Members holding a majority of votes possible to be cast under this Declaration and the Developer if it then owns any Townhome Lots. Except as otherwise provided herein, at all other times, this Declaration may be amended by a Supplemental Declaration by an instrument signed by the Members holding at least sixty-six and two-thirds percent (66 2/3%) of the votes possible to be cast under this Declaration. Proper approval of all amendments shall be shown by a certificate of the Secretary of the Association, attached to the Supplemental Declaration to be recorded, certifying that the signature of the Developer or, if required, the signatures of a sufficient number of Members approving the amendment, are on file in the office of the Association. No amendment shall be effective until the Supplemental Declaration setting forth the approved amendment is recorded in the Office of the Recorder of Deeds for Platte County, Missouri. Such amendments may amend, alter or modify the terms of this Declaration as it effects all existing Townhome Lots, including terms which impose additional covenants, conditions, restrictions and easements on such Townhome Lots. Any amendment that effects less than all existing Townhome Lots in the Subdivision shall be effective only as to those such Townhome Lots where the Owners thereof agree to such amendment. In no event shall any amendment reduce, interfere with or impair the Association's or its Directors' ability to establish and collect Assessments.

16.3. **Revocation; Termination.** This Declaration shall not be revoked or terminated at any time without the affirmative vote of at least sixty-six and two-thirds percent (66 2/3%) of the votes of the Members possible to be cast under this Declaration and the approval of the Developer at all times prior to the Turnover Date or while it owns any Townhome Lot. Such revocation or termination shall be evidenced and effective in the same manner as set forth in Article 16.2 above for amendments hereof.

16.4. **Amendments Requiring City Consent.** Notwithstanding any other provision herein, no modification, alteration or amendment of this Declaration which conflicts with (a) any plat of any portion of the Subdivision, (b) any agreements entered into by the Developer and the

City concerning the Subdivision, or (c) any City ordinance or code, may be made or become effective without the prior written consent of the City.

ARTICLE 17 GENERAL PROVISIONS

17.1. **Enforcement.** Except as otherwise provided herein, the Association or the Board of Directors, the Developer and every Owner of a Townhome Lot has the right and power to enforce, by a proceeding at law or in equity, all conditions, covenants, restrictions and easements set forth in this Declaration. Failure of the Association or the Board of Directors, the Developer or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so at a subsequent time. Any person successfully enforcing any terms of this Declaration shall, in the discretion of a court of competent jurisdiction, be entitled to recover its reasonable attorneys' fees and costs from the person against whom this Declaration was enforced. In the event that the Developer, the Association or its Board of Directors fail to enforce this Declaration, any Owner or Member may take such action to enforce the same by proceedings in a court of competent jurisdiction.

17.2. **Severability.** If any provision of this Declaration, or the application hereof to any circumstance, is held to be invalid or unenforceable to any extent, the remainder of this Declaration and its application to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

17.3. **Developer's Right to Assign.** The Developer may, by appropriate agreement made expressly for that purpose, assign or convey to a Successor Developer all, or any part, of the rights, reservations and privileges herein reserved by the Developer. Upon recording of the assignment in the Office of the Recorder of Deeds of Platte County, Missouri, the Developer's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document. Every Successor Developer shall have the rights of the Developer, including the right to transfer such rights set forth in this Article 17.3.

17.4. **Release of Liability.** None of the Developer, the Association, the Board of Directors or the members of the Review Committee, nor their respective officers, directors, stockholders, members, employees or agents, shall be liable to any Owner, Member or other person for any discretionary -action taken or not taken under the terms hereof including, without limitation, approval, disapproval or failure to approve of any application or enforcement or non-enforcement of the terms hereof.

17.5. **Indemnification.** To the fullest extent permitted by law, every director and officer of the Association, the members of the Review Committee and the Developer (to the extent a claim may be brought against the Developer by reason of its election, appointment, removal or control over directors of the Association Board, its officers or members or the Review Committee) shall be indemnified by the Association, and every other person serving as an employee or direct agent of the Association or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board of the Association, be indemnified by the Association against all liabilities, damages, costs and expenses, including reasonable

attorneys' fees and costs, incurred by or imposed upon him or her in connection with any proceeding or any settlement thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Association (or, in the case of the Developer, by reason of having elected, appointed, removed or controlled, or failed to control, officers or directors of the Association or members of the Review Committee) whether or not he or she is a director, an officer or a member of the Review Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Association's Board shall determine, in good faith, that such officer, director, member of the Review Committee or other person, or the Developer, did not act, fail to act or refuse to act, willfully, or with gross negligence, or with fraudulent or criminal intent, in the performance of his, her or its duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such persons may be entitled at law or otherwise. Appropriate contractual liability insurance shall be obtained pursuant to Article 4 above to cover any liability exposure by virtue of the foregoing indemnification.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed by its duly authorized officers as of the day and year first above written.

***ALL SIGNATURES MUST BE IN BLACK INK.**

DEVELOPER:

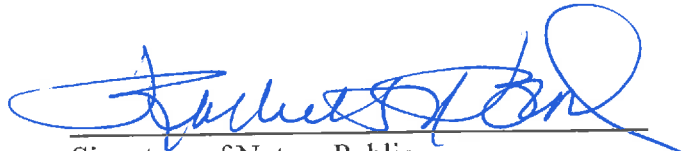
BARRYVIEW HOLDINGS, LLC.

By: 
Brian Mertz, *Manager*

ACKNOWLEDGEMENT

STATE OF MISSOURI)
 JACKSON) S.S.
COUNTY OF PLATTE)

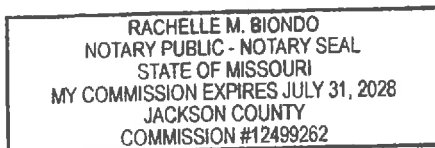
On this 30th day of April, 2025, before me, the undersigned Notary Public in and for said County and State, personally appeared **BRIAN MERTZ** who, being by me first duly sworn, did say that he is a **MEMBER** of **BARRYVIEW HOLDINGS, LLC.**, a Missouri limited liability company, that he executed the foregoing instrument on behalf of said corporation under and with the authority of its Board of Directors and that he/she acknowledged that he/she so executed the same as the free act and deed of said corporation for the purposes therein stated.


Signature of Notary Public

(Notary Seal)

My Commission expires:

7/31/28



**EXHIBIT A
TO
FIRST AMENDED AND RESTATED DECLARATION OF HOMES ASSOCIATION
AND COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF
BARRYVIEW TOWNHOMES**

**ORIGINAL LEGAL DESCRIPTIONS OF PROPERTY COVERED BY AND SUBJECT
TO THIS DECLARATION**

PLAT BOUNDARY DESCRIPTION

All that part of the South Half of the Southeast Quarter of Section 12, Township 51 North, Range 34 West in Kansas City, Platte County, Missouri, more particularly described as follows:

Commencing at the Southeast corner of the Southeast Quarter of said Section 12; thence North 89 degrees 42 minutes 16 seconds West, along the South line of the Southeast Quarter of said Section 12, a distance of 1308 feet, to a point on the Southerly extension of the East line of Tract "C" TIFFANY MANOR, 2ND PLAT, a subdivision in Kansas City, Platte County, Missouri; thence North 0 degrees 24 minutes 40 seconds East along the East line and its extension of said Tract "C" and along the West line and its extension of Tract "A", TIFFANY MANOR, a subdivision in Kansas City, Platte County, Missouri, a distance of 535 feet, to the True Point of Beginning of subject tract; thence continuing North 0 degrees 24 minutes 40 seconds East, along the East line of said Tract "C" and along a line parallel to the East line of the Southeast Quarter of said Section 12, a distance of 428.64 feet, to the Northeast corner of said Tract "C"; thence North 89 degrees 46 minutes 28 seconds West, along the North line of said Tract "C", a distance of 10 feet to the Southeast corner of Tract 4, TIFFANY MANOR, 3RD PLAT, a subdivision in Kansas City, Platte County, Missouri; thence North 0 degrees 24 minutes 40 seconds East along the East line of said TIFFANY MANOR, 3RD PLAT, a distance of 355 feet to a point on the North line of the South Half of the Southeast Quarter of said Section 12, said point also being on the South line of Lot 14, BERRY VIEW SQUARE - THIRD PLAT, a subdivision in Kansas City, Platte County, Missouri; thence South 89 degrees 46 minutes 28 seconds East along the North line of the South Half of the Southeast Quarter of said Section 12 and along the South line and its extension of said Lot 14 and along the South line and its extension of Lots 13, 12 and 11, BERRY VIEW SQUARE, SECONDS PLAT, a subdivision in Kansas City, Platte County, Missouri, a distance of 882 feet; thence South 0 degrees 24 minutes 40 seconds West, along a line parallel to the East line of the Southeast Quarter of said Section 12, a distance of 660 feet to a point on the North line of said Tract "A"; thence North 89 degrees 46 minutes 28 seconds West, along the North line of said Tract "A" and along a line 660 feet South of and parallel to the North line of the South Half of the Southeast Quarter of said Section 12, a distance of 75 feet; thence South 60 degrees 54 minutes 18 seconds West, along the Northwestern line of said Tract "A", a distance of 253.93 feet; thence North 89 degrees 42 minutes 16 seconds West along a line parallel to the South line of the Southeast Quarter of said Section 12, a distance of 576 feet to the True Point of Beginning, subject to that part, if any, in streets, roadways, highways or other public rights-of-way.

CONTAINING 664,229.59 S.F. OR (15.25 ACRES), MORE OR LESS.