

COVER SHEET

Title of Document: Westchester Homes Association Amended and Restated
Declaration and Declaration of Covenants, Conditions, Restrictions
and Dedication of Easements Responsibilities

Date of Document: July 26, 2024

Grantor: Westchester Homes Association

Grantee: Westchester Homes Association

Legal Description: See attached Exhibit A

Reference Document: Book 2974, Beginning at Page 475
Recorded on April 24, 1989

Submitted by: Rod J. Hoffman
Martin, Pringle, Oliver, Wallace & Bauer, LLP
9401 Indian Creek Parkway, Suite 1150
Overland Park, KS 66210
(913) 491-5500

**WESTCHESTER HOMES ASSOCIATION
COVENANTS
TABLE OF CONTENTS**

Opening Page 1

Definitions Page 2

The Plan Page 3

Article I - The Land Page 3

Article II – Name Page 3

Article III – Purposes; Restrictions Page 4

 3.1 Purposes Page 4

 3.2 Restrictions Page 4

 3.3 Enforcement of Restrictions and Rules Page 12

 3.4 Potential View Obstruction Page 13

 3.5 Relationship to City Ordinances..... Page 13

 3.6 Renting and Leasing Page 13

Article IV – Designated Common Areas Page 16

Article V - Units Page 16

 5.1 Unit Page 16

 5.2 Party Walls Page 16

Article VI – Westchester Homes Association Page 18

 6.1 Establishment of Association Page 18

 6.2 Membership and Voting Rights Page 18

 6.3 Authority of BoardPage 18

 6.4 Waiver and Release Page 19

 6.5 No Liability for Approval or Disapproval; Indemnification Page 20

Article VII – Maintenance and Repair	Page 21
7.1 Association and Responsibilities	Page 21
7.2 Unit Owners Responsibilities	Page 23
Article VIII- Utility Services	Page 23
Article IX – Insurances; Losses	Page 24
9.1 Liability Insurance	Page 24
9.2 Insurance to be obtained and maintained by Unit Owners.....	Page 25
9.3 Hazard Insurance Carrier.....	Page 25
9.4 Nominee; Power of Attorney	Page 26
Article X – Grants and Reservations of Rights and Easements	Page 26
10.1 Easements of Enjoyment; Limitations	Page 26
10.2 Easements for Encroachments	Page 27
10.3 Easement for Support and Service	Page 27
10.4 Easement for Proper Operations	Page 27
10.5 Easement for Services	Page 28
10.6 Arbitration.....	Page 28
10.7 Power of Attorney	Page 28
10.8 General	Page 28
Article XI – Assessments and Assessment Liens	Page 29
11.1 Types of Assessments	Page 29
11.2 Elements-Appportionments; Due Dates	Page 29
11.3 Effective Date of Assessment	Page 32
11.4 Effect of Nonpayment of Assessment Remedies of Association	Page 33
11.5 Subordination of the Lien to First Mortgages	Page 36

11.6 Initiation Fee	Page 36
11.7 Assignment or Sale	Page 36
Article XII – Condemnation	Page 36
Article XIII – Instrument Requirements	Page 37
13.1 Unit Owner’s Rights and Obligations	Page 37
13.2 Compliance with Declaration, Bylaws, Rules and Regulations	Page 37
Article XIV – Notices	Page 37
14.1 Association Address	Page 37
14.2 Notices to Unit Owners	Page 37
Article XV - Amendments	Page 38
15.1 Power to Amend	Page 38
15.2 Method to Amend.....	Page 38
15.3 Form of Consent of Unit Owners	Page 38
Article XVI – General Provisions	Page 39
16.1 Security	Page 39
16.2 No Liability for Utility Failure, Certain Personal, Real Property Damage....	Page 39
16.3 Covenants Running with the Land	Page 39
16.4 Enforcement	Page 40
16.5 Severability	Page 40
16.6 Gender and Grammer	Page 40
16.7 Captions	Page 40
EXHIBIT A – Legal Description of Property	Page 42

**WESTCHESTER HOMES ASSOCIATION AMENDED AND RESTATED
DECLARATION AND DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND DEDICATION OF EASEMENTS RESPONSIBILITIES**

- A. Westchester Development Company, Inc. ("Developer") has created a planned community on a certain real property located in Johnson County, Kansas, legally described in Exhibit A, a subdivision in Lenexa, Johnson County, Kansas; and all additions and amendments thereto, all of which are commonly known as WESTCHESTER (collectively, the "Property") containing areas for, but not limited to any of the following: residential, and related uses, as the same may, from time to time, be implemented in substantial conformance with governmental approvals therefore.
- B. The undersigned owners and Westchester Homes Association desire to update the method of governance for that certain real property legally described in Exhibit "A".
- C. Developer provided for a plan for the preservation of the values and amenities of the Westchester community and for the maintenance of private open space therein, including any improvements located thereon, by subjecting the Property to certain Declaration of Covenants, Conditions, Restrictions, and Dedication of Easements, dated February 14, 1989 and recorded on April 24, 1989 in Book 2974, Page 475 in the Register of Deeds Office, Johnson County, Kansas, together with all amendments, modifications and additions thereto (collectively, the "Restrictions"). On that same date, Developer recorded that certain Homes Association Declaration in Volume 2974 at page 517.
- D. This Amended and Restated Declaration replaces and supersedes those documents and their amendments.
- E. Upon recordation of this Amended and Restated Declaration, Owners of the Units described in Exhibit A shall have a right and non-exclusive easement of enjoyment on and to the Common Area within the Property in accordance with the provision of

the Declaration and an obligation to contribute to the cost of improvement, operation, and maintenance of such Common Area.

NOW THEREFORE, in consideration thereof and pursuant to the power and authority provided to the Owners' Association as set forth in this Declaration and Restrictions, the property described in Exhibit A is made subject to the covenants, conditions, restrictions and easements of this Amended and Restated Declaration, and such additional covenants, conditions as herein set forth.

Definitions The terms used in this document shall have these meanings, unless the context requires otherwise:

"Articles" means the Articles of Incorporation, filed with the Secretary of the State of Kansas, incorporating a Kansas non-profit corporation which serves as the Association under this Declaration.

"Assessment" means each monthly assessment, special assessment, Special Unit Expense, reserve fee, monetary fine, lien fee, and other amount levied by the Association against a Unit or otherwise payable to the Association by the Owner of a Unit in accordance with this Declaration.

"Association" means Westchester Homes Association, Inc., which has been formed as a Kansas non-profit corporation, for the purpose of serving as the homeowners' association for the overall area known as "Westchester".

"Board" and **"Board of Directors"** mean those persons who, as a group, serve as the Board of Directors of the Association and have the power to act on behalf of the Association.

"Bylaws" means the document that contains the procedures to conduct the affairs of the Association, as amended from time to time.

"Common Areas" means those portions of the property not owned individually by Unit Owners, but in which an indivisible interest is held by all Unit Owners, generally including the grounds, parking areas, and recreational facilities.

"Declaration" means this instrument, by which the Property is subjected to the covenants, restrictions, assessments, and easements set forth herein, as this instrument may be amended

from time to time, and recorded in the office of the Register of Deeds of Johnson County, Kansas.

"Lien" refers to a legal claim on behalf of the Westchester Homes Association upon the Unit Owner to secure payment of all assessed amounts due.

"Occupant" means a person lawfully residing in a Unit, regardless of whether that person is a Unit Owner, tenant or otherwise.

"Property" means the tracts of land herein described in this Declaration, all buildings, structures, and improvements situated thereon, and all easements, rights and appurtenances belonging thereto. The Property is legally described in Exhibit A attached hereto.

"Recording Office" means the Office of the Register of Deeds of Johnson County, Kansas, or other applicable governmental office in which documents related to ownership and encumbrance of real property in Johnson County, Kansas are filed of record in order to give public notice thereof.

"Unit" means the portion of a building which is designed and used exclusively for single family residential purposes.

"Unit Owner" means a person, or trust, who owns a unit.

The Plan

NOW, THEREFORE, the Association and its Owners hereby subjects all the Property to the covenants, restrictions, assessments, and easements hereinafter set forth and makes and establishes the following plan for the Property.

ARTICLE I

THE LAND

The legal description of the land constituting the Property, located in the City of Lenexa, Johnson County, Kansas, is attached hereto at Exhibit A.

ARTICLE II

NAME

The name by which the Property shall be known is Westchester Homes Association, Inc.

ARTICLE III**PURPOSES; RESTRICTIONS**

3.1 **Purposes.** This Declaration is being made to establish separate individual parcels from the Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of Units and the wellbeing of Unit Owners and Occupants.

3.2 **Restrictions.** The Property shall be benefited by and subject to the following restrictions:

(a) **Unit Uses.** Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto; provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care, or treatment facility. Notwithstanding the foregoing:

An Occupant maintaining a personal or business library, keeping personal or business records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees, or invitees coming to the Unit and complies with all City ordinances), making business telephone calls or corresponding, in or from a Unit, is deemed to be engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions;

(b) **Visible Areas.**

(i) Nothing shall be caused or permitted to be hung or displayed visible from the outside or inside of windows or placed on the outside walls of a building or otherwise outside of a residence, or any part thereof, except for seasonable decorations in compliance with any rules and regulations adopted by the Board and except for interior drapes, curtains, shutters, or blinds which,

from exterior observation, must be harmonious, or as otherwise authorized by the Board.

(ii) No awning, canopy, shutter, or any other device or ornament shall be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch, or balcony, visible to the exterior, unless authorized by the Board.

(iii) No outside antenna, satellite dish, or other device for the reception or transmission of radio or television or other electronic signals shall be erected or maintained on any lot or upon the exterior of any Unit, without prior written approval of the Board, and then only in such places and under such conditions as are expressly authorized by the Board. The Board shall have the power to limit the size of the device and require such specific areas and methods of placement of any such device as it deems appropriate in order to render the installation as inoffensive as possible to other Occupants. In the event these limitations, or any part thereof, are deemed unlawful, the Board shall have the right to regulate the placement of such devices in a manner not in violation of the law.

(iv) No speaker, horn, whistle, siren, bell, or other sound device shall be located, installed, or maintained upon the exterior of any residence or in any yard, except intercoms, devices used exclusively for security purposes, and television or stereo speakers used in accordance with any rules specified by the Board.

(v) No lawn art may obstruct or interfere with the maintenance activities of the Association. The Association's contractors shall have absolutely no liability with respect to any damage to any lawn art caused by such maintenance activities.

(vi) No lights or other illumination (other than street lights) shall be higher than the residence. All exterior Christmas holiday lights shall be permitted to be lit only between November 15 and January 15 and must be removed by February 15th. All other holiday lights may be displayed for a

reasonable time frame. Except for such holiday lights, LED strip or track lights under soffits or elsewhere are prohibited.

(vii) No shed, barn, detached greenhouse or outbuilding, basketball goal or court or other sports court of any kind, animal run, free standing flag pole, animal house, trampoline, play house, play structure, tree house, batting cage, tennis court, clothesline, or swimming pool, shall be erected upon, moved onto, or maintained upon any lot or in any yard. No hot tub shall be installed on any lot without the express written consent of the Board.

(viii) Solar panels cannot be erected upon the exterior of any Unit, without prior written approval of the Board, and then only in such places and under such conditions as are expressly authorized by the Board. The Board shall have the power to limit the size of the solar panels and require such specific areas and methods of placement of any such solar panels as it deems appropriate to render the installation as inoffensive as possible to other Occupants. In the event these limitations, or any part thereof, are deemed unlawful, the Board shall have the right to regulate the placement of such solar panels in a manner not in violation of the law.

(ix) No fences or walls shall be permitted on any lot, (i) except as may be constructed around or between a patio and/or deck, hot tub, or other permitted area approved by the Board, and (ii) except for any fencing or walls that may be installed by, or for, the Association. Underground electronic pet fencing is not permitted. The Board shall not be responsible for repairing or replacing any private fence, or dividing wall, or decking that may be allowed to be installed for a Unit.

(c) Offensive Activities. No noxious or offensive activity shall be carried on with respect to any Unit; nor shall any Unit be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant.

(d) Trash. No outdoor burning of trash, grass or construction material shall be allowed. No trash, refuse, or garbage can or receptacle shall be placed outside a

residence, except in the evening of the day before or upon the day for scheduled trash collection through 12 hours after actual pick-up.

(e) Garages and Vehicles Garage doors shall always remain closed except when reasonably necessary for ingress and egress. No vehicle shall be parked on the street or driveway to obstruct ingress or egress by a Unit Owner, family, guest, and invitees except for the reasonable needs of emergency, construction, or service vehicle for a time limited to as briefly as possible.

(i) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage. Motor vehicles may be serviced or repaired only in an enclosed garage.

(ii) For the purpose to keep streets clear, parking more than 48 hours of any motor vehicle, motorcycles, trailers or similar apparatus of any type or character on any street (public or private) is prohibited other than on the Unit individual driveway directly leading to the Unit, except as expressly authorized by the Board in writing on a short-term basis due to special circumstances. No commercial vehicle shall be left or stored overnight in the Unit Property, except in an enclosed garage, except as expressly authorized by the Board. No vehicle from one Unit shall park on the driveway of another Unit, without the consent of the Occupants of that other Unit.

(iii) Trucks or other vehicles with gross vehicle weight of 12,000 pounds or over are prohibited in the Unit Property except during such limited time as such truck or vehicle is being used during working hours within the property for its specific purpose.

(iv) Parking of recreational motor vehicles of any type or character is prohibited in the Unit Property and on the streets except:

(a) When stored in an enclosed garage;

(b) Temporary parking on the individual driveway of the Unit for the purpose of loading and unloading (maximum of 48 hours every 14 days); or

(c) With prior written approval of the Board.

(v) Guest parking and moveable units. For a period not to exceed forty-eight (48) hours, family, guests, and invitees of Unit Owners may park their vehicles in the guest parking areas provided as part of the Common Areas. Guest parking areas are not intended for use by the Unit Owners and their occupants for parking or storing boats, trailers, camping units, or any personal vehicles and the Association may ensure the proper use of said areas in such legal manner as it deems necessary.

(f) Storage No temporary storage pod or container may remain on any lot (other than in an enclosed garage) for more than 10 days in any 60-day period.

(g) Signs No sign, advertisement or billboard may be erected or maintained on any lot, except that:

(i) One sign not more than three feet high and/or three feet wide may be maintained offering the residence for sale. The Board shall have the right to require and establish a uniform "for sale" sign.

(ii) One garage sale sign not more than three feet high and/or three feet wide is permitted on the lot when a permitted garage sale is being held, provided such signs are erected in accordance with City code and are installed no more than two hours before the start of the sale and are removed within two hours after the close of the sale.

(iii) Political signs are permitted in accordance with the applicable Kansas State law.

(iv) Small school related signs may be maintained near the residence while the student is residing in the residence. Event celebration signs ("new baby", "happy birthday," "graduation", etc.) may be maintained for up to seven days.

(v) No sign shall be permitted which (A) describes the condition of the Unit or the lot, (B) describes, maligns, or refers to the reputation, character or building practices of the Association, any Realtor, or any other Owner, or (C)

discourages or otherwise impacts or attempts to impact a party's decision to acquire a Unit. In the event of a violation of the foregoing provisions, the Association shall be entitled to remove any such offending sign, and in so doing, shall not be subjected to any liability for trespass, violation of constitutional or other rights, or otherwise. If these limitations on the use of signs, or any part thereof, are determined to be unlawful, the Board shall have the right to regulate the use of signs in a manner not in violation of law. No sign shall be placed or maintained in any Common Area without the approval of the Board.

(h) Fuel Tanks. No outside fuel storage tanks of any kind shall be permitted (except standard propane tanks for outside grills).

(i) Mailboxes. If the United States Post Office uses "gang" boxes, they shall maintain, repair, and replace mailboxes for reasonable wear and tear.

(j) Address Plates. All residences shall have house number plates in the style(s) approved by the Association, which plates shall be located adjacent to the front door or garage (or, where not practical, at another location approved by the Board).

(k) Maintenance. Except for the specific items listed as the Association's responsibility in Section 7.1, and except for the specific items listed in this Declaration as the Association's responsibility, each Unit Owner shall properly maintain the owner's Unit including, without limitation, the interior and exterior thereof and any fence, decking or wall that may have been installed, in a neat, clean, and orderly fashion and in good condition and repair at all times.

(l) Replacements. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason shall be of the same materials, colors, location, and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Board. Any building erected to replace an existing building containing one (1) or more Units shall be of new construction, be of comparable structure type, size, design, colors, and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

(m) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Areas, which may impair the structural integrity of any improvement.

(n) Animals. Except for pets, no animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit. All pets shall be confined to the residence, except when on a leash controlled by a responsible person. Pets may not be tethered outside. The number of pets allowed in a residence must comply with the current animal control ordinance of the City of Lenexa, Kansas. You are required to license all dogs and cats age 6 months and older, within 10 days of the pet residing in Lenexa. Unit Owners and Occupants shall immediately clean up after their pets on all streets, yards, Common Areas, areas owned by others and their own lot. Any costs incurred by the Association to correct any damage caused by a pet shall be assessed against the Unit Owner of the Unit keeping the pet and such Unit as a Special Unit Expense. By acceptance of a deed to a lot, all Unit Owners thereof acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with dogs and other animals. The Association and their respective officers, directors, managers, representatives, and agents shall have no liability or responsibility to any Unit Owner or other party with respect to such inherent risks and hazards. To the maximum extent permitted by law, each Unit Owner, for themselves, the members of their family, guests, tenants, and invitees, shall be deemed to have released and agreed never to make a claim against the Association or any of their respective officers, directors, managers, representatives or agents for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with any dogs or other animals, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

(o) Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would unlawfully or unfairly discriminate against any Unit Owner in favor of another.

(p) Landscaping and Irrigation. No trees, bushes, or other landscaping shall be installed by or for any Unit Owner or Occupant, and no modifications or extensions of

any common irrigation system shall be made by or for any Unit Owner or Occupant, in each case without the express written consent of the Board.

(q) Architectural Control. The Architectural Review Committee (ARC) may from time to time adopt and promulgate such rules and regulations regarding the form and content of plans and specifications to be submitted for approval, and may publish and/or record such statements of policy, standards, and guidelines. No exterior addition or alteration to a Unit shall be made unless and until the plans and specifications showing the nature, kind, shape, height, materials, colors, and location of the same shall have been submitted to and approved in writing by the Board and (if required) approved by the City.

(r) Warranties. All warranties and guarantees given by any manufacturers, suppliers, contractors or other third parties relating to any landscaping or other items for which the Association has any repair or replacement responsibility shall be automatically deemed assigned by the Unit Owner to the Association for purposes of submitting claims thereunder and enforcement thereof. Each Unit Owner shall cooperate with the Association in connection with all such warranties and guaranties.

(s) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations as it deems necessary or desirable, and not in conflict with this Declaration, to promote harmony, to serve the best interests of the Unit Owners and the Association, and to protect and preserve the nature of the Property. A copy of all rules and regulations, and amendments thereof, shall be furnished by the Board, as applicable, to the Unit Owners prior to the time when the same shall become effective.

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

(u) Fines and Other Enforcement. The Board may enforce all the foregoing restrictions, rules, and regulations by establishing, levying, and collecting fines and other enforcement charges, having vehicles, trailers or other apparatus towed away at the expense of the owner, and/or taking such other lawful actions as the Board, in its sole discretion, deems appropriate.

3.3 Enforcement of Restrictions and Rules. Any violation by a Unit Owner or Occupant with respect to a Unit of any rule or regulation adopted by the Association, or the breach of any restriction, covenant or provisions contained in this Declaration, shall give the Board the right, in addition to all other rights set forth herein:

(a) To establish, levy and collect monetary fines as a Special Unit Expense upon the offending Unit Owner and the Unit in such amounts as the Board deems necessary to effect compliance with the requirements.

(b) To enter upon the portion of the lot upon which or as to which such violation or breach exists and to summarily abate and remove, or repair and maintain, at the expense of the offending Unit Owner as a Special Unit Expense, any structure, thing, or condition which may exist thereon, contrary to the intent and meaning of the provisions hereof, and the Association, or their successors, assigns or agents shall not thereby be deemed guilty in any manner of trespass. Notwithstanding the foregoing, the Association shall not have the right or authority to alter (other than to repair) or demolish any items of construction without institution of judicial proceedings. So long as the Association (as applicable), its agents or employees exercise reasonable care in the performance of such repairs, maintenance, or alterations, they shall not be liable to the offending Unit Owner for any damages caused in so doing. The cost of such work shall be collected from the offending Unit Owner as a Special Unit Expense in the same manner as other assessments. In addition, the Association, or its representatives, together with emergency personnel, shall have an immediate right of access to all Units in the Occupants' absence under emergency conditions;

(c) To enjoin, abate or remedy the continuance of any breach by appropriate legal proceedings, either at law or in equity; and/or

(d) To recover from the offending Unit Owner as a Special Unit Expense, in any legal proceedings to enjoin, abate or remedy a breach, all costs of such action incurred through the Association, including court costs and reasonable attorneys' fees.

3.4 Potential View Obstruction. No Unit Owner or Occupant has any right to an unobstructed view beyond the boundaries of the applicable Unit. No Unit Owner shall be entitled to prevent the construction or location of any structure, trees, landscaping, or other item on any other part of the Property, where otherwise permitted by the Association, because such structure, trees, landscaping, or other item obstructs any view from the affected Unit.

3.5 Relationship to City Ordinances. The provisions of this Declaration shall be valid and enforceable even if such provisions are more restrictive than the City's ordinances or other applicable laws. The parties entitled to enforce this Declaration shall also have the right to enforce, in a private civil action under this Declaration, all City ordinances and other laws that are applicable to the Property, even if the City or other applicable governmental authority chooses not to enforce the same. All such City ordinances and other applicable laws that are in effect from time to time shall be automatically incorporated into this Declaration by this reference.

3.6 Renting and Leasing. Except for "grandfathered Units" consisting of 8523 Hauser Court, 8570 Caenen Lake Court and 8546 Caenen Lake Court as defined below, all Units shall be occupied by their Unit Owners or immediate family members of Unit Owners. Any Units which are rented on or before May 22, 2017 shall be "grandfathered" Units and shall be exempt from this rental restriction. Upon the sale of any "grandfathered" Units, said Units must be occupied by their unit Owners or immediate family members of Unit Owners.

(a) Any leasing of grandfathered Units shall be subject to the following restrictions:

(i) Occupancy or use of a Unit for more than 90 days in any one year by a person, other than a Unit Owner, a member of the Unit Owner's family, or a temporary caretaker, shall require the execution of a lease agreement between the Unit Owner and the occupant upon a form specified or approved by the Board of Directors. No Unit Owner shall lease to a corporation, partnership, trust, or entity other than a natural person. Each lease shall stipulate that if the lessee, after notice from the Board of Directors, shall fail to conform to the provisions of the lease, the Bylaws, this Declaration and the rules and regulations of the Association, the Board of Directors shall be authorized to evict or require the lessee to vacate the Unit on 30 days written notice, and lessee shall do so, without prejudice to the Board's other legal remedies. During the term of the lease, either the lessee, or the Unit Owner, but not both, shall be entitled to the privileges of use of the Common Areas including swimming pool and other facilities.

(ii) No portion of a Unit, other than the entire Unit, may be rented. Except as provided herein, no Unit may be let or sublet for a period of less than 12 months, whether rents or other fees are received by the Unit Owner.

(iii) All Unit Owners leasing their Units shall bind all lessees to the provisions of this Declaration and duly adopted rules and regulations by utilizing the Association's Standard Lease Form or Addendum which shall be maintained by the Association's managing agent or the Board of Directors. All leases shall be filed with the Association's managing agent or the Board of Directors.

(iv) No Unit within the subdivision shall be rented for transient or hotel purposes.

(v) No Unit shall be leased to more than two persons not related by blood or marriage.

(vi) All Unit Owners shall provide the Board of Directors with the identity of the Occupants of their Units.

(vii) All Unit Owners shall be jointly and severally liable to the Association for all damage to the Common Areas caused by the negligent or intentional acts, omissions, use or misuse of the Common Areas by their tenants, or their guests, invitees, employees, or agents to the extent that any such damage is not covered by the Association's insurance. In addition, the Unit Owner and the Unit Owner's tenant shall be jointly liable for the deductible for any such damage to the Common Areas.

(viii) In the event a tenant is found to have violated the Bylaws, this Declaration or the rules or regulations of the Association (after being given notice of the violation and an opportunity for a hearing thereon), the Board of Directors shall be authorized to require the Unit Owner of that residence to evict or require the lessee to vacate the premises on 30 days written notice. In the event that the Unit Owner fails to evict his or her tenant, the Board may evict the tenant and the cost thereof shall be assessed to the residence and constitute an assessment for which the Association has a lien against that residence, enforceable as all other assessments pursuant to this Declaration. The Board may exercise its rights under this provision without prejudice to the Association's other legal remedies.

(ix) All Unit Owners leasing their Units must conduct background and criminal checks on their tenants.

(x) All Unit Owners leasing their units must retain a professional property manager to maintain the exterior of the leased Unit according to the standards of the Association.

(xi) Unit Owners may not lease their Units if any assessments against the Unit are delinquent. In the event the Association files suit to recover delinquent assessments of a leased Unit, the Unit Owner designates the lessee as agent to receive suit papers and summonses to court in legal actions to recover such delinquencies.

ARTICLE IV**DESIGNATED COMMON AREAS**

Common Areas. The Common Areas will include the Common Areas defined in the Plat. The Association shall have the right to designate, alter and improve the Common Areas and to add and designate additional Common Areas from time to time in its discretion. The Common Areas shall be owned, maintained, and controlled by the Association, subject to easements in favor of the City and other governmental authorities.

ARTICLE V**UNITS**

5.1 Units. Each of the dwelling Units is the portion of a building which is designed and used exclusively for single family residential purposes.

5.2 Party Walls. Each wall which is built as a part of the original construction of the building for the specific attached Units or otherwise built as an exterior boundary wall between any two Units, and placed or intended to be placed on the dividing line between two or more Units, shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence and willful acts or omissions shall apply thereto.

(a) The repair and maintenance of a party wall to the extent not covered by insurance shall be shared by the Unit Owners who make use of the wall in proportion to such use.

(b) Notwithstanding any other provision of this Declaration, any Unit Owner who by his, her or its or an Occupant's negligence or willful act causes any interior party wall to be exposed to the elements shall bear the entire cost of furnishing the necessary protection against such elements.

(c) The right of any Unit Owner to contribution from any other Unit Owner with respect to the obligations relating to party walls shall be considered an appurtenant right and pass to all successors in interest to the title of such Unit.

(d) The boundary line between Units which share a party wall is and shall be deemed to be the center line of the wall regardless of the actual location of the platted boundary line.

(e) If Unit Owners of Structures with party walls disagree about the timing, scope of repair or replacement, or any other issue affecting their structures, the following procedures shall control.

(i) Negotiation. The Unit Owners shall make every reasonable effort to meet in person and confer for the purpose of resolving their differences by good faith negotiations. If requested in writing, the Board may appoint a representative to assist the parties in negotiating a resolution of the difference of opinion.

(ii) Mediation. If the parties have not solved their differences through negotiation within 30 days of the date of the notice to the Board, either Unit Owner shall have 30 additional days to submit the dispute to mediation with an entity designated by the Association (if the Association is not a party to the dispute) or to an independent agency providing dispute resolution services in the Johnson County, Kansas area.

If the Unit Owners do not settle their difference within 30 days after submission of the matter to mediation or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminate. Either Unit Owner shall thereafter be entitled to file suit.

Each Unit Owner shall bear its own costs of the mediation, including attorney's fees, and each Unit Owner shall share equally all fees charged by the mediator.

ARTICLE VI

WESTCHESTER HOMES ASSOCIATION

6.1 Establishment of Association. The Westchester Homes Association has been formed to serve as the Unit Owners' Association for the Property.

6.2 Membership and Voting Rights. Every person or entity who is an owner of a lot in Westchester shall become a member of Westchester Homes Association with all the rights and responsibilities thereunder. Unit Owners shall have voting rights as stated in the By-Laws.

6.3 Authority of Board. The Association shall have the following powers and duties which it may exercise and perform whenever in its discretion it may deem them necessary or desirable, without limitations to-wit:

(a) To enforce, either in its own name or in the name of any owner within the Property, any or all building restrictions which may have been heretofore, or may hereafter be imposed upon any of the land in the Property, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of restrictions or reservations being made by the parties having the rights to make such changes, releases or modifications as are permissible in the deeds, declarations or contracts in which such restrictions and reservations are set forth nor shall it serve to prevent the assignment of those rights by the proper parties, whenever and wherever such rights of assignments exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for. Nothing herein contained shall be deemed or construed to prevent any Unit Owner having the contractual right to do so from enforcing in his own name any such restrictions.

(b) To manage and control as trustee for its members all private streets, Common Areas, swimming pool, and clubhouse, if any, service areas, sidewalks and other public places which may now be or hereafter designated such, all improvements thereon, provided that such management and control of said places and improvements shall be

subject to and exercised by any city, county, and state, in which said places and improvements are located.

(c) To erect and maintain signs for the marking of streets and safety signs for the protection of persons, when such signs are not available from any public source.

(d) To employ duly qualified peace officers for the purpose of providing such police protections as the Association may deem necessary or desirable in addition to that rendered by public authorities.

(e) To exercise control over such easements as it may acquire from time to time.

(f) To pay taxes and special assessments on such real estate and personal property as may be owned by the Association.

(g) To maintain public liability, worker's compensation, fidelity, property coverage, director and officer liability, indemnification, and other insurance with respect to the activities of the Association within the Property.

(h) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

(i) To incur borrowings, and grant liens and security interests on the Association's assets and future Assessments to secure such borrowings.

(j) To establish, levy and enforce fines and penalties for the violation or infraction of any provisions of this Declaration, or any applicable rules, regulations, restrictions, policies, guidelines, or procedures.

(k) To exercise such other powers as may be set forth in this Declaration.

6.4 Waiver and Release. Anything in this Declaration to the contrary notwithstanding, it is agreed that each Unit Owner (the "Releasing Party") hereby releases the Association and the other Unit Owners (the "Released Party") from any liability which the Released Party would, but for this Section, have had to the Releasing Party resulting from any accident or occurrence or casualty (i) which is or would be covered by any insurance required to be carried under this Declaration, or (ii) which is or would be covered by a fire or special form property

insurance policy in use in the State of Kansas, whether or not the Releasing Party is actually maintaining such an insurance policy, or (iii) which is covered by any other casualty or property damage insurance being carried by the Releasing Party at the time of such occurrence, which casualty may have resulted in whole or in part from any act or omission of the Released Party, its officers, agents or employees.

6.5 No Liability for Approval or Disapproval; Indemnification.

(a) To the fullest extent permitted by law, neither the Association, nor any of their officers, directors, managers, representatives, or agents, nor any member of the Board (or any committee thereof) shall be personally liable to any person for

(i) any approval, disapproval, or failure to approve any matter submitted for approval,

(ii) the adoption, amendment or revocation of any rules, regulations, restrictions, or guidelines,

(iii) the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions, or guidelines, or

(iv) any other course of action, inaction, omission, error, or negligence taken or omitted in good faith and which the Association, the Association officers, directors, or committee members reasonably believed to be within the scope of his or its powers or duties.

(b) If any Unit Owner commences a lawsuit or files a counterclaim or cross claim against the Association, the Board, any committee, or any individual, director, officer or committee member, and such Unit Owner fails to prevail in such lawsuit, counterclaim or cross claim, the Association, the Board, committee or individual director, officer or committee member sued by such Unit Owner shall be entitled to recover from such Unit Owner all litigation expenses incurred in defending such lawsuit, counterclaim or cross claim, including, without limitation, reasonable attorneys' fees. Such recovery right shall constitute a lien against the Unit Owner's Unit and shall be enforceable against such Unit.

ARTICLE VII**MAINTENANCE AND REPAIR**

7.1 Association Duties and Responsibilities. From and after its incorporation, the Association shall (as a common expense and not as a Special Unit Expense):

(a) provide for the scheduled painting of exterior wood trim surfaces of a Unit which, at the time of painting, shall consist of preparing the surface (scraping and priming as required). "Exterior Wood Trim Surfaces" means those wood trim surfaces of the building that are exposed to the out-of-doors and were painted at the time such building was constructed, but shall not include any decks that may have been painted or stained. Such service by the Association shall not include the repair or replacement of any wood, stucco, windows, glass, exterior doors, or other materials (which shall be the expense of the Unit Owner). If trim is of a color other than the association approved standard white, the Unit Owner will provide the paint.

(b) maintain and repair (including start up and winterization), but not replace or expand irrigation systems within the Property;

(c) provide for snow removal from driveways, and sidewalks from driveway to front stoop after snow has fallen and stopped accumulating, per Board's discretion. The amount of accumulated snow must be on an average greater than 3 inches throughout the Property.

(d) provide for the cleaning of rain gutters and downspouts (not including buried drains) on a schedule set by the Board.

(e) care for, spray, trim, protect and replant trees, as determined, on all streets and in other common areas where trees have once been planted, when such services are not available from any public source, and to care for, protect and replant shrubbery, and resow grass and replace sod in any Common Areas shown on the Plat of Westchester, or on property which may hereafter be dedicated for common use.

(f) mow, care for, maintain and remove all rubbish from vacant and unimproved property and to do any other things necessary or desirable in the

judgment of the Board to keep any vacant and unimproved property and the parking in front of any property neat in appearance and in good order.

(g) provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(h) provide such lights as the Association may deem advisable on streets, parking areas, pedestrian ways, gateway entrances or other features and in other public or semi-public places, when such facilities are not available from any public source.

(i) provide for the repair and maintenance of street gutters, curbs, catch basins, guest parking areas, sidewalks, pedestrian walkways, and storm sewers when such services are not available from any public source.

(j) provide for the maintenance of lawns, swimming pool, perimeter fences, gate house, gateway entrance, or other public place shown on the Plat of Westchester or created by separate instrument from land described in preamble hereto.

(k) do any other things necessary or desirable in the judgment of the Board to keep the property neat in appearance and in good order.

(l) the Association shall (as a Special Unit Expense) maintain, repair, and replace all common sanitary sewer service lines from the manhole or point of connection at the public line to the entry point into the applicable building and all sanitary sewer service lines within the building to the extent common to both Units.

The Board, in its discretion, shall determine the scope and timing of the foregoing services and functions of the Association and shall determine the amounts of the required reserves. Neither the Association, nor any of its respective officers, directors, managers, representatives, or agents shall have any liability to any Unit Owner or other person if no reserves are established or maintained or if the reserves established or maintained are inadequate.

The Board, in its discretion, may cause the Association to provide other exterior maintenance services for the Units that are not part of the required services described above.

7.2 Unit Owner Responsibilities. Subject to the Association's obligations to repair and/or replace specific items in the event of a casualty loss covered by insurance maintained by the Association or as expressly provided in Section 7.1 above, and subject to the Association's obligation to provide certain services under this Declaration, each Unit Owner shall always repair and maintain in good condition the exterior of the Unit, and all components thereof, owned by that Unit Owner. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit Owner shall include, without limitation, repair, maintenance, and replacement of exterior lighting fixtures and electrical fixtures, and all exterior glass windows, screens, exit doors, garage doors, screen doors, and other doors, including the frames, sashes and jams, and the hardware therefor. Except for those specific items listed as an Association responsibility in Section 7.1, and except for those specific items listed as an Association responsibility in this Declaration, each Unit Owner shall repair and maintain in good condition at all times the exterior of his or her Unit and related improvements, including, without limitation, roofs, exterior siding and surfaces, all patio enclosures, driveways, patios, decks, deck stairs, stoops/porches, screen porches, garages and garage doors, underground drains, walls, sidewalks from driveway to front stoop, concrete pads, air conditioning units, heat pumps, sump pumps and discharge pipes, utility meters, utility lines, chimneys, flues and all landscaping including mulch, plants and shrubs, and other landscaping which were planted or constructed by or on behalf of the previous, current or future owner of the Unit. In the event a Unit Owner fails to timely make a repair or perform maintenance required of that Unit Owner, the Association may perform the repair or maintenance and the cost of such repair or maintenance, plus a reasonable overhead and supervision charge, shall constitute a Special Unit Expense on such Unit Owner's Unit and on such Unit Owner.

ARTICLE VIII

UTILITY SERVICES

By acceptance of a deed to a Unit, each Unit Owner agrees to pay for all utility services separately metered, sub metered or otherwise separately charged to that Unit. Water for the Units and or Unit Property irrigation systems may be separately metered and billed to each Unit

or may be supplied through master meters billed to the Association. If water is supplied through master meters, the Association may include a uniform charge to each Unit as an assessment under Article XI. All other utility costs provided through the Association shall be common expenses and paid by the Association.

ARTICLE IX

INSURANCE; LOSSES

9.1 Liability Insurance. The Association shall obtain and maintain (or cause to be obtained and maintained), at the Association's cost and as a common expense, a commercial policy of general liability insurance insuring the Association, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) not less than \$2,000,000.00 for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, or other Unit Owners or Occupants, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the Association's operations, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association.

The Association shall obtain and maintain to the extent reasonably available, the following:

- (a) Workmen's compensation insurance to the extent necessary to comply with applicable law; and
- (b) A "Legal Expense Indemnity Endorsement," or its equivalent, affording protection for the officers and directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment, or cause

of action to which any such officer or director shall have been made a party by reason of his or her services as such; and

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

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

9.2 Insurance to be obtained and maintained by Unit Owners. The Owner of any lot and Unit shall obtain and maintain casualty insurance, insuring all improvements owned by the Unit Owner against loss by fire, lightning, windstorm or other casualty and extended coverage in an amount equal to full replacement value (i.e., one hundred percent, 100% of replacement costs exclusive of the land, foundation, and excavation), respectively. All premiums for such insurance shall be paid by each Unit Owner.

Annually, the Association may require the evidence of insurance coverage, with all appropriate endorsements and provisions as specified herein from each Unit Owner.

9.3 Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Kansas which has a "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VII" or better in Best's Insurance Reports-International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurer Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service, if available, or if not available,

the best rating available. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A.M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

9.4 Nominee; Power of Attorney. There may be named, under any policy obtained by the Association, a nominee as an insured on behalf of the Association, who shall have exclusive authority to negotiate losses under any such policy. Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its nominee, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or its nominee, shall receive, hold, or otherwise properly dispose of any proceeds of insurance, in trust, for the Association, the Unit Owners and their first mortgage holders, as their interests may appear and as set forth in this Declaration. This power is for the benefit of each and every Unit Owner, and their respective first mortgage holders, the Association, and the Unit Property, runs with the land, and is coupled with an interest.

ARTICLE X

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

10.1 Easements of Enjoyment; Limitations. Every Unit Owner shall have a right and easement (i) for ingress to and egress from such Unit Owner's lot and Unit over and across all the applicable portions of the Common Areas, and (ii) for use and enjoyment of all other Common Areas for their intended purposes, which rights and easements shall be appurtenant to and shall pass with the title to a Unit subject to the right of the Board, as applicable, to make reasonable rules and regulations concerning the use and management of the Common Areas, including, without limitations, parking rules and regulations. Each Unit Owner shall be deemed

to have assigned that Unit Owner's right of enjoyment to the Common Areas and to ingress and egress to the Occupants of that Unit.

10.2 Easements for Encroachments. Each Unit shall be subject to and benefited by easement for encroachments on or by any other Unit created or arising by reason of overhangs, by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements, or by reason of errors on the Plat. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Plat, shall and do exist so long as the encroachments remain.

10.3 Easement for Support and Service. Every portion of a building or utility line or any improvement on any portion of a Unit Property contributing to the support of services to another building, utility line or improvement on another portion of the Unit Property shall be burdened with an easement of support and service for the benefit of all other such buildings, utility lines, improvements, and other portions of the Unit Property. The Association and Unit Owner shall have a reasonable easement over every applicable Unit for purposes of access to and repair and maintenance of all common utility pipes and lines.

10.4 Easements for Proper Operations. Blanket easements in favor of the Association, all Unit Owners, the City, Johnson County, and other appropriate public authorities and/or providing companies, and their contractors are hereby granted and reserved upon, over and under all the Unit Property and Units (including, as necessary, the interiors thereof) for ingress to and egress from, and for the installation, replacing, repairing, and maintaining of all utilities, including, but not limited to water, sewer, gas, telephone, electricity, the road system and all walkways, and for all other purposes necessary for the proper operation of the Property and the adjacent areas. By these easements it shall be expressly permissible for the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to install, construct and maintain the necessary appurtenances and improvements on, above, across and under the Unit Property. Should any public authority or other company

furnishing a service request a specific easement, permit, or license, the Association, (acting through the Board) shall have the right to grant such easement, permit, or license.

10.5 Easement for Services. Non-exclusive easements are hereby granted to all police, fire personnel, ambulance operators, mail, delivery, garbage, and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the lots in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

10.6 Arbitration. In the event of any dispute arising concerning any party wall or party fence, the same shall be determined by compulsory arbitration. Each party shall choose one arbitrator and such arbitrators shall choose one additional arbitrator and the decision rendered by a majority in number of all the arbitrators shall be final and binding on all said parties. If any party refuses to appoint an arbitrator within ten days after written request thereof, the Board of Directors of the Association shall have the authority to select an arbitrator for the refusing party.

10.7 Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association or its designated representative, as his, her or its attorney-in-fact, to execute, deliver, acknowledge, and record, for and in the name of such Unit Owner, such easements, licenses, permits, and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit Owner, and the Unit Property, runs with the land, is coupled with an interest, and is irrevocable.

10.8 General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements, but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

ARTICLE XI

ASSESSMENTS AND ASSESSMENT LIENS

11.1 Types of Assessments. In addition to assessments levied against all Units in the Property, assessments shall be determined and assessed against the Units by the Board, in its discretion, subject to the requirements and procedures set forth in this Declaration and the Bylaws. Each Unit Owner shall be obligated, and by acceptance of a deed to a Unit (whether it is so expressed in such deed) is deemed to covenant and agree to pay to the Association:

- (a) annual operating assessments (payable monthly) to pay common expenses,
- (b) special assessments to pay for capital improvements, and
- (c) Special Unit Expenses, all which assessments shall be established and collected as provided in this Declaration.

11.2 Elements-Appportionments; Due Dates.

(a) Annual Operating.

(i) Annual operating assessments to pay common expenses shall be payable in monthly installments and shall be assessed against all Unit owners.

(ii) Annually, in advance where practical, the Board shall estimate, and allocate among all Units subject to assessment and their Unit Owners on an equal amount per Unit basis, "common expenses" of the Association, consisting of the following:

- (a) the estimated fiscal year's cost of the maintenance, repair, and other services to be provided or paid for by the Association in excess of reserves;
- (b) the estimated fiscal year's costs of management and professional services to be paid by the Association;

(c) the estimated fiscal year's costs for insurance premiums to be provided and paid for by the Association;

(d) the estimated fiscal year's costs for utility services not separately metered or charged to Unit Owners;

(e) an amount deemed adequate by the Board to fund reserves for future Capital Expenses.

(f) the estimated fiscal year's costs for the operation, and administration management, and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and other costs constituting common expenses not otherwise herein specially excluded.

(iii) The Board shall thereupon allocate to each Unit subject to assessment that Unit's equal share of the total estimated common expenses, and thereby establish the annual operating assessment for each such Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(iv) The annual operating assessment for each Unit subject to assessment shall be payable in equal monthly installments, if nothing contained herein shall prohibit any Unit Owner from prepaying assessments without a discount for prepayment. The due dates of any such installments shall be established by the Board, or, if it fails to do so, an equal monthly pro rata share of the annual operating assessment for a Unit shall be due the first day of each month.

(v) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the

deficiency may be assessed by the Board as a special operating assessment among the Units subject to assessment on an equal amount per Unit basis, and shall become due and payable on such date or dates as the Board determines.

(vi) If assessments collected during any fiscal year are more than the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit Owners.

(vii) The rate of annual assessment per Unit shall be in addition to any other assessments chargeable to a particular Unit and in addition to the initiation fee described in Section 11.6. The rate of annual assessment per unit shall be set by the Board.

(b) Special Assessments for Capital Improvements

(i) In addition to the annual operating assessments and any special operating assessment, the Board may levy, at any time, special assessments to construct, reconstruct or replace capital improvements in the property the extent that reserves therefor and any applicable insurance proceeds with respect thereto are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation or to correct any deficiency or defect creating a safety or health hazard to Occupants) shall not be constructed, nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to 10 percent (10%) or more of that fiscal year's budget, without the consent of Unit Owners owning at least 60 percent (60%) of the then existing Units.

(ii) Any such special assessment shall be prorated among all Units on an equal amount per Unit basis, and shall become due and payable on such date or dates as the Board determines.

(c) Special Unit Expenses. In addition to their liability for common expenses, Unit Owners shall also pay all assessments by the Association for Special Unit Expenses in the amount attributable to their respective Units as determined by the Board of Directors in its reasonable discretion. Special Unit Expenses may be based upon actual or estimated costs to the Association attributable to a Unit Owner, independent billings of respective creditors, usage, or any other reasonable basis. Except as provided in Section 7.1, in the event the Association incurs any special or unusual expense that does not benefit all the Unit Owners, then those Unit Owners benefiting from such expense shall solely be responsible to pay for that expense. In this regard, the Board in good faith shall decide whether any such expense is of a nature that it does not benefit all the Unit Owners and whether certain Unit Owners are benefiting. If so, the appropriate amount of such cost shall be assessed to each of the benefiting Unit Owners as a Special Unit Expense. The Board's decisions relating to Special Unit Expenses shall be made in good faith and shall be final and binding.

(d) Defense of Claims. If any Unit Owner commences a lawsuit or files a counterclaim or cross claim against the Association, the Board, or any committee, or any individual director, officer or committee member of the Association, and such Unit Owner fails to prevail in such lawsuit, counterclaim or cross claim, the Association, Board, or individual director, officer, or committee member sued by such Unit Owner shall be entitled to recover from such Unit Owner all litigation expenses incurred in defending such lawsuit, counterclaim or cross claim, including reasonable attorneys' fees. Such recovery right shall constitute a Special Unit Expense against such Unit Owner and shall be enforceable against such Unit as provided herein.

11.3 Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is

sent by the Association to the Unit Owner subject thereto. Written notice mailed or delivered to a Unit Owner's Unit shall constitute notice to that Unit Owner, unless the Unit Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner.

11.4 Effect of Nonpayment of Assessment, Remedies of the Association.

(a) If any installment of an Assessment is not paid within 10 days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

(b) If any installment of an Assessment is not paid within 10 days after the same is due,

(i) interest shall accrue on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board may establish from time to time by rule,

(ii) a late fee shall be charged in the amount as the Board may establish from time to time by rule,

(iii) the cost of collection, including attorney fees and other out-of-pocket expenses shall be charged, and

(iv) at the option of the Board and to the extent allowed by law, the Board may cut-off or restrict the services to be provided to the Unit by the Association.

(c) All Assessments, together with interest, late fees, and costs, including attorney fees, shall be a charge and lien in favor of the Association upon the Unit against which each such Assessment is made.

(d) At any time after any Assessment or an installment of an Assessment levied pursuant hereto remains unpaid for 30 or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that Assessment, including all future installments thereof, interest, late fees, and costs, including attorney fees, may be

filed with the Register of Deeds Office pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification of the Unit against which the lien exists, and the amount of the unpaid portion of the Assessments and charges, and shall be signed by an officer or other agent of the Association. For each certificate so filed, the Association shall be entitled to collect from the Unit Owner of the Unit described therein a fee, which fee shall be added to the amount of the delinquent Assessment and the lien on the Unit and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board).

(e) The lien provided for herein shall become effective from the time a certificate of lien is duly filed therefor, and shall continue for a period of five years unless sooner released or satisfied in the same manner provided by law in the State of Kansas for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(f) Each Assessment together with interest, late fees, and costs, including attorney fees, shall be the joint and several personal obligations of the Unit Owners who owned the Unit at the time when the Assessment fell due and all subsequent Unit Owners.

(g) In addition to the other remedies available to it, the Association, as authorized by the Board, may bring, or join in an action at law against the Unit Owner(s) personally obligated to pay the same, an action to foreclose a lien. In any foreclosure action, the applicable Unit Owner(s) shall be required to pay a reasonable fair market rental for that Unit during the pendency of such action. The Association in any foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest, and costs of such action (including attorneys' fees) shall be added to the amount of any such Assessment, to the extent permitted by Kansas law.

(h) In the event that a Unit Owner has twice been delinquent for at least 30 days in the payment of Assessments due to the Association, the Unit Owner may be required by the Board, in the discretion of the Board, to make and maintain a security deposit with the Association not in excess of twice the amount of monthly Assessment then in effect, which security deposit may be collected as are other Assessments. Such a security deposit shall be held by the Association as part of its general funds, and no interest shall be due and payable or credited thereto. The Association may apply the security deposit to the Unit Owner's obligations at any time when such Unit Owner is 10 or more days delinquent in paying his or her Assessments. Upon the sale of the Unit by such Unit Owner, any amount of the security deposit that is remaining after satisfaction of all amounts owed with respect to the Unit at the time of such sale shall be refunded to the former Unit Owner.

(i) No claim of the Association for Assessments and charges shall be subject to setoffs or counterclaims. To the extent permitted by law, each Unit Owner hereby waives the benefit of any redemption, homestead, and exemption laws now or hereafter in effect, with respect to the liens created pursuant to this Declaration.

(j) No Unit Owner may waive or otherwise avoid liability for the Assessments provided for in this Declaration by non-use or by waiving use or enjoyment of the Common Areas or the services provided by the Association, or any part thereof, or by abandonment of his, her or its Unit. No Unit Owner shall be entitled to a reduction or abatement of any Assessment as a result of any failure or interruption of any utility or other service or any damage to or destruction of or the making of any repairs or replacements to any Common Area or to any Unit.

(k) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their interests in the Property, and are necessary to continue to provide services, and, accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

11.5 Subordination of the Lien to First Mortgages. The lien of the Assessments and charges provided for herein (except any utility-related charges properly chargeable by the terms hereof to a particular Unit and any Special Unit Expenses) shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises. The foregoing will not relieve any successor owner from the obligation for Assessments accruing thereafter or the prior Unit Owner from the personal obligation for Assessments accruing before the date of such deed. If the Unit Owner subsequently redeems the Unit from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in faith.

11.6 Initiation Fee. Upon the closing of the sale of any Unit by the Owners, the new Unit Owner shall pay to the Association a one-time initiation fee equal to two times the amount of the monthly Assessment then in effect. This initiation fee shall be in addition to the first regular monthly Assessment.

11.7 Assignment or Sale. Except as otherwise expressly provided in Section 11.5 above, upon assignment, sale, or other transfer of his or her Unit to a new owner, all Assessments and other amounts owed by the transferring Unit Owner must be paid in full and will be the joint and several liability of both the transferring Unit Owner and the new Unit Owner. The transferring Unit Owner and will have no liability for any Assessments accruing on such Unit and levied by the Association after the closing date of such assignment, sale, or transfer.

ARTICLE XII

CONDEMNATION

In the event that any Unit is taken by condemnation or the exercise of the power of eminent domain, each Unit Owner of and the holder of mortgages on the Unit shall be entitled to seek and have their just damages for the taking of the Unit, as allowed by law, including severance damage, if any. No provision herein shall be deemed to give any Unit Owner or any other party priority over the rights of the holder of any first mortgage on any Unit in the case of a distribution of condemnation awards for losses to or a taking of the mortgaged Unit.

ARTICLE XIII**INSTRUMENT REQUIREMENTS**

13.1 Unit Owners' Rights and Obligations. Each Unit Owner will be vested with the rights and be personally liable for and subject to the duties of a Unit Owner set forth herein, or in any other Instrument, or established by law, during the time of ownership of a fee simple interest in a Unit.

13.2 Compliance with Declaration, Bylaws, Rules, and Regulations. Each Unit Owner shall comply strictly with the provisions of this Declaration, the Articles, the Bylaws, and any rules and regulations of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover damages or for injunctive relief, or both, maintainable by the Association and/or, to the extent permitted by law.

ARTICLE XIV**NOTICES**

14.1 Association Address. The Association shall designate from time to time the place where payment of Assessments shall be made and other business in connection with the Association may be transacted.

14.2 Notices to Unit Owners. All notices required or permitted under this Declaration shall be deemed given if (i) deposited in the United States Mail, postage prepaid, and addressed to the Owner at the address of the Unit or other address provided by the Owner to the Association in writing, or (ii) sent by electronic mail to the Owner at the electronic mail address last provided by the Owner to the Association. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE XV**AMENDMENTS**

15.1 Power to Amend. Except as otherwise specifically provided in this Declaration, additions to, changes in, or amendment of this Declaration shall require the consent of at least sixty percent (60%) of the Unit owners. Notwithstanding the foregoing:

(a) The consent of at least 80% of the Unit Owners and the written consent of the City shall be required to terminate the Association and this Declaration.

(b) The written consent of the Association (acting through the Board) shall be required for the termination of this Declaration in its entirety or for any amendment, modification, or termination of any provision of this Declaration regarding the Association.

15.2 Method to Amend. An amendment to this Declaration, adopted with the consents of Unit Owners, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the provisions of this Article XV. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recording office.

15.3 Form of Consent of Unit Owners. The consent of Unit Owners to any amendment of this Declaration may be obtained in the form of written consent(s) executed by the Unit Owners of at least the specified percentage of Units or in the form of a formal resolution approved by the Unit Owners of at least the specified percentage of Units at a duly held meeting of the members.

ARTICLE XVI

GENERAL PROVISIONS

16.1 Security. The Association, the Unit Owners, and their respective officers, directors, managers, representatives, and agents shall not in any way be considered insurers or guarantors of security within the property. Neither the Association, nor any of their respective officers, directors, managers, representatives, or agents shall be held liable for any loss, damage, injury, or death by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Each Unit Owner, occupant, tenant, guest, and invitee assumes all risk of loss, damage, injury or death to persons, to Units, and to the contents of Units and further acknowledges that the Unit Owners, the Association, and their respective officers, directors, managers, representatives and agents have made no representations or warranties, nor has any Unit Owner, occupant, tenant, guest, or invitee relied upon any representations or warranties, express or implied, relative to any security measures recommended or undertaken or not undertaken.

16.2 No Liability for Utility Failure and Certain Personal and Real Property Damage. Except to the extent covered by insurance maintained by the party to be charged, neither the Association, the Board, nor the Unit Owners shall be liable for injury or damage to persons or property caused by the elements or other events of nature, or resulting from utility failure or from water, rain, dust, or sand which may leak or flow from outside of the building, or for inconvenience or discomfort resulting from any action taken to comply with any law, ordinance, or orders of a governmental authority. No diminution or abatement of assessments shall be claimed or allowed for such injury or damage or for such inconvenience or discomfort.

16.3 Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens, and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in or to all or any part of the Property, and the Association, and their respective heirs, executors, administrators, successors, and assigns.

16.4 Enforcement. In addition to any other remedies provided in this Declaration, the Association and each Unit Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by the Association, or any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien, or charge.

Whenever the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Unit, the Association may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Unit involved.

To the maximum extent permitted by law, the Association shall be entitled to receive from the party breaching this Declaration, as part of the judgment or decree or any dismissal or settlement, the reasonable legal fees and expenses incurred by the Association with respect to such action.

16.5 Severability. Invalidity of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect.

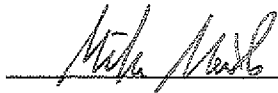
16.6 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply to entities, men or women shall in all cases be assumed as though in such case fully expressed.

16.7 Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

This declaration shall become effective and binding upon all Units upon the execution hereof by the recordation hereof in the Recording Office.

IN WITNESS WHEREOF, the undersigned President and Secretary of the Association executes this instrument as of the 26 day of July 2024.

WESTCHESTER HOMES ASSOCIATION

By: 
(Mike Meile, President)

By: 
(Sharon Blancett, Secretary)

Mike Meile
Print Name

Sharon Blancett
Print Name

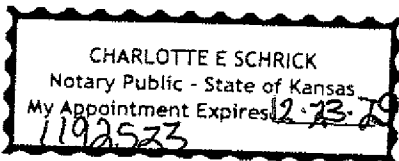
STATE OF KANSAS

(COUNTY OF JOHNSON)

On this 26th day of July, 2024 before me a Notary Public in and for said State, personally appeared Sharon Blancett and Mike Meile on behalf of Westchester Homes Association, Inc., known to me to be the president and secretary who executed the within instrument in behalf of acknowledged to me that he/she executed the same for the purposes therein stated.



Notary Public



My Commission Expires:

12-23-25

EXHIBIT A - LEGAL DESCRIPTION OF PROPERTY

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

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

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

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

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

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

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

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

Legal Descriptions for Westchester Courts Subdivisions, Continued

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

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

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

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

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

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

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

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

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

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

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