

1717577

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND HOMEOWNERS ASSOCIATION**

THIS DECLARATION is made as of the 22nd day of June, 1987, by EIGHTY THIRD STREET PROPERTIES, a Kansas general partnership, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain property in Overland Park, County of Johnson, State of Kansas, which is more particularly described as:

Lots 1 through 34, inclusive, and Tract A of ORLEANS COURT, a subdivision in Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

all of which is referred to hereinafter as the "Property"; and

WHEREAS, Declarant desires to establish certain restrictions on the use of the Property and to create a Homeowners Association;

NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title, or interest in the Property or any part thereof, and their heirs, successors, and assigns, and shall inure to the benefit of each owner of all or any part of the Property. The Property is hereby submitted to the provisions of the Kansas Townhouse Ownership Act, K.S.A. 58-3701 et seq. (the "Act")

ARTICLE I

DEFINITIONS

Section 1.1. "Association" shall mean and refer to ORLEANS COURT HOMEOWNERS ASSOCIATION, a Kansas not-for-profit corporation to be informed by Declarant, and such corporation's successors and assigns.

Section 1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 1.3. "Property" shall mean and refer to that certain real property herein above described.

Section 1.4. "Common Area" shall mean all real property (including the improvements and facilities thereon) owned by the Association for the common use and enjoyment of all Owners. The common Area improvements and facilities to be owned by the Association at the time of this Declaration include certain drives, parking areas, yard areas, trash and garbage collection facilities, a common water distribution system and a water retention basin. The Common Area real estate is legally described as follows:

TRACT A, ORLEANS COURT, a subdivision is Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

Section 1.5. "Lot" shall mean and refer to any separately-described parcel of real estate within the Property (with the exception of any Common Area) upon which a Townhouse Unit is situated, including such Townhouse Unit, and any other improvements thereon.

Section 1.6. "Declarant" shall mean and refer to Eighty Third Street Properties, a Kansas general partnership, and its successors and assigns.

Section 1.7. "Townhouse Unit" shall mean and refer to a single-family dwelling built within or on the boundaries of any lot, which may be joined together with at least one additional single-family dwelling by a common wall or walls, and/or roof, and/or foundation. At the time of this Declaration, the Property includes those certain thirty-four (34) Townhouse Units situated on the Lots legally described as follows:

Lots 1 through 34, inclusive, of ORLEANS COURT, a subdivision in Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

Section 1.8. "Board" shall mean the Board of Directors of the Association.

ARTICLE II

PROPERTY RIGHTS

Section 2.1. Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to establish reasonable rules and regulations for the use of the Common Area, including, without limitation, parking rules and regulations; and

(b) The right of the Association, subject to the provisions of Section 10.4 and Section 10.5 of Article X, to dedicate, convey or encumber all or any part of the Common Area.

Section 2.2. Assignment of Right to Use. Any Owner may assign his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 2.3. Easements for Public Utilities. The Association shall have, and there is hereby reserved, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of, drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines, cable television lines and other utilities (collectively the "Utilities"), over, under, upon and through all easements and rights-of-way shown on the recorded plat of the Property or additional easements and right-of-way on the Common Areas approved by the members as provided in Section 10.4 of Article X. All utility easements and rights-of-way shall inure to the benefit of all utility companies for purposes of

installing, maintaining or moving any Utilities and shall inure to the benefit of all Owners and the Association as a cross easement for Utilities or service thereof.

In addition, the Association (as to the common water distribution system) and each Owner (as to the Utilities serving such Owner's Lot) shall have and there is hereby reserved, a right and easement over, under, upon and through every Lot and Townhouse Unit for such portion of said common water distribution system or said Utilities, if any, installed on, in or through any other Owner's Lot or Townhouse Unit as of the date of recording this Declaration. No Owner shall unreasonably deny access to any such Utilities to the Association, any utility company or any Owner whose Lot is served by the same, or the agents or contractors of any of them, for purposes of maintenance, repair and replacement of the same; provided, however, that the Owner whose Lot is served by any of such utilities, and the Association in the case of the common water distribution system, shall repair all damage and shall indemnify and hold harmless any Owner whose Lot is burdened by such Utilities for any loss or damage incurred in connection with such maintenance, repair or replacement, or the unreasonable failure to maintain, repair or replace the same.

Section 2.4. Declarant and Association Easements. Each Owner covenants that the Declarant and the Association and their respective designees shall have an easement in, on, across, over, and under such Owner's property to permit the Declarant and the Association to carry out their respective rights, powers and duties hereunder, including, without limitation, to effect any desired or necessary maintenance or repairs or the installation of such items as are common to all Owners.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 3.1. Every Owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 3.2. The Association shall have two classes of voting membership.

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

Class B. The Class B member shall be the Declarant, which shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or

(b) On July 1, 1988.

Section 3.3. The Association shall have the right to suspend an Owner's voting rights (i) for any period during which any assessment against such Owner's Lot remains unpaid and (ii) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 4.1. Creation of the lien and Personal Obligation of Assessments. The Declarant, for each Lot within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed

in such deed, is deemed to covenant and agree, to pay the Association: (1) monthly assessments or charges, and (2) special assessments for capital improvements, operating deficits, necessary expenses, and such other purposes as are set forth in this Declaration, such assessments to be established and collected as hereinafter provided. Subject to the provisions of the Act and Section 4.9 of this Article IV, all such assessments, together with interest on past-due assessments and the Association's costs and expenses, including reasonable attorney's fees, of collecting and enforcing the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made, except as provided in Section 4.9 of this ARTICLE IV. The successors in title of any Owner shall have the right to recover from such Owner all unpaid assessments against the Lot conveyed at the time of the conveyance.

Each such assessment, together with interest on past-due assessments and the Association's cost and expenses, including reasonable attorney's fees, of collecting and enforcing the same, shall also be the continuing personal obligation of the person who was the Owner at the time when the assessment became due. Subject to the requirements of the Act, in a voluntary conveyance, the grantee of an Owner shall be jointly and severally liable with such Owner for all unpaid assessments against such Owner for assessments up to the time of conveyance, without prejudice to the right of the grantee to recover from such Owner the amounts paid by the grantee therefore.

Section 4.2. Purposes of Assessment. All assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Property; for the management, improvement, maintenance and repairs of the Common Area; including, without limitation, taxes, special assessments and insurance premiums with regard thereto; for administrative expenses of the Association, including manage-

ment legal and accounting fees and premiums for such insurance policies as the Board deems necessary; for costs of trash and garbage collection and water service for all Lots and the Common Area; for reasonable reserves for the foregoing purposes; and for such other expenses as shall be agreed to by two thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called as provided herein.

Section 4.3. Basis and maximum of Monthly Assessments.

(a) Until January 1, 1988, the maximum monthly assessment shall be \$59.00 per Townhouse Unit.

(b) From and after January 1, 1988, the Board may increase the maximum monthly assessment effective January 1 of each year without a vote of the membership in proportion to the rise, if any, of the "all items" Consumer Price Index for All Urban Consumers (CPI-U; Base: 1967 = 100), U.S. City Average, published by the United States Bureau of Labor Statistics (the "CPI"), from the second preceding month of July to the preceding month of July.

In the event that the CPI ceases to incorporate a significant number of items, or if a substantial change is made in the method of establishing such CPI, then the CPI shall be adjusted in a fair and reasonable manner to the figure that would have resulted had no substantial change occurred in the manner of computing such CPI. In the event that such CPI (or a successor or substitute index) is not available, such governmental or other service publication as shall evaluate the information in substantially the same manner as the aforesaid CPI, shall be used in lieu thereof.

(c) From and after January 1, 1988, the Board may increase the maximum monthly assessment above that established by the CPI formula with the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(d)The Board may fix the monthly assessment at any amount not in excess of the maximum.

(e)Nothing herein contained shall be deemed or construed to limit the amount of any special assessments provided for in this Declaration.

Section 4.4. Special Assessments for Capital Improvements, Operating Deficits and Necessary Expenses. In addition to the monthly assessments authorized above, the Association may levy, in any assessment year, one or more special assessments applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon the Common Area, including fixtures and personal property related thereto; provided, that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

In addition, the Association shall levy, in any assessment year, one or more special assessments for the purpose of defraying, in whole or in part, (i) all operating deficits for any assessment year resulting from costs and expenses beyond the reasonable control of the Association, and (ii) the costs and expenses of necessary repairs, reconstruction or replacement to the Common Area.

Section 4.5. Notice and Quorum for Any Action Authorized Under Article IV. Written notice of any meeting called for the purpose of taking any action authorized under this Article IV shall be sent by the Association to all members not less than 15 days nor more than 45 days in advance of the meeting. Such written notice shall set forth the purpose(s) of the meeting. At each such meeting so called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the voter of each class membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be

called subject to a no less than five (5) day notice requirement and the required quorum at each subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. Any number of such subsequent meetings may be called until a meeting with the required quorum can be held. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 4.6. Uniform Rate of Assessment. Both monthly assessments and special assessments which are applicable to all Lots must be fixed at a uniform rate for all Lots.

Section 4.7. Date of Commencement of Monthly Assessments Due Dates. The monthly assessments provided for herein shall commence as to each Lot on July 1, 1987 or, if later, the day on which the Declarant first transfers title of any Lot to another party. The Board shall fix the amount of the monthly assessment against each Lot for the succeeding calendar year by December 1 of each year and shall deliver written notice of the next year's monthly assessment to every Owner. The due dates for monthly assessments shall be the first day of each calendar month unless otherwise established by the Board. Special assessments shall be due and payable as provided by the Board, and at the discretion of the Board, special assessments may be made payable in installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessment on a Lot is binding upon the Association as of the date of its issuance.

Section 4.8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association shall be entitled to avail itself of any and all remedies at law or in equity to enforce payment of past-due assessments.

without limiting the generality of the foregoing, the Association may file a certificate of nonpayment of assessment in the office of the Register of Deeds of Johnson County, Kansas and the Association may bring an action at law against the Owner personally obligated to pay the assessment or foreclose the lien provided for herein as provided by the Act; provided, however, that the pursuit of any one or more remedies shall not operate as a waiver or bar of any other remedy. No Owner may exempt himself from or otherwise escape liability for any assessments by waiver of the use of enjoyment of the Common Area or by abandonment of his Lot.

Section 4.9. Subordination of the Lien. The lien of the assessments provided for herein shall be prior to all other liens on any Lot, except such lien shall be and hereby is subordinated to (i) all sums unpaid on a first mortgage or record and (ii) tax liens on the Lot in favor of any assessing unit or special district. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to first mortgage foreclosure shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, but such unpaid assessment thereafter shall be deemed to be common expenses collectible from all Owners, including the Owner who acquires the Lot as a result of such first mortgage foreclosure, in proportion to each Owner's share of aggregate monthly assessment. No such sale or transfer pursuant to first mortgage foreclosure shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No mortgage shall be required to collect an assessment.

ARTICLE V

MAINTENANCE

Section 5.1. Common Areas. The Association shall provide for the management, improvement, maintenance and repair (including snow removal) of the Common Area. The Association

shall maintain a policy of insurance on the Common Area improvements and facilities against such hazards as are generally carried in the area under standard extended coverage provisions.

Section 5.2. Owner's Liability. In the event that the need for maintenance or repair of the Common Area is caused through the willful or negligent act of an Owner, his family, guests, or invitees, the costs of such maintenance or repair shall be a special assessment against such Owner's Lot and shall be subject to the lien provided herein.

Section 5.3. Owner's Maintenance. Subject to the provisions of Article VII hereof, each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to maintain and keep in repair such Owner's Lot and the Townhouse Unit and other improvements thereon, including, but not limited to (i) the fixtures thereof (including all water pipes and equipment which are not part of the common water distribution system), (ii) any party walls, porches, roofs and painting as provided in Article VI and (iii) all exterior surfaces, screens, porches, sidewalks and patio and balcony areas. Each Owner shall provide for snow removal on the porches and sidewalks on such Owner's Lot.

No Owner shall do any act or any work which might or will impair the structural soundness or integrity of any Townhouse Unit or other improvement or impair any easement or hereditament provided for herein.

If the Board shall determine that any Owner has failed to properly maintain and repair such Owner's Lot or Townhouse Unit or other improvements thereon (including, without limitation the maintenance and repair described in Article VI), the Board may, in its sole discretion, send such Owner a notice specifying the necessary maintenance or repairs. If such Owner does not complete maintenance and repairs within a reasonable time not to exceed thirty (30) days after sending of such notice, the

Association may, in the sole discretion of the Board, cause such maintenance and repairs to be completed and assess all its costs and expenses with regard thereto as a special assessment against the Lot of such Owner subject to the line provided herein.

ARTICLE VI

PARTY HALLS, SHARED PORCHES, ROOFS AND UTILITIES, PAINTING

Section 6.1. General Rules of Law to Apply. Each wall which is built as part of the original construction of the Townhouse Units upon the Property and intended or designed to be placed on or about the dividing line between individual Townhouse Units on each Lot (the "Wall") shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law in the State of Kansas regarding party walls and liability of property damage due to negligence or willful act or omissions shall apply thereto.

Section 6.2. Boundary Lines: Ownership Rights. The boundary line between Townhouse Units which share a Wall is and shall be deemed to be the center line of the Wall. Each Owner shall have the full rights of ownership, use and occupancy of the Townhouse Unit located primarily upon such Owner's Lot, and no Owner shall have any right, title or interest in any part of any other Townhouse Unit not owned by such Owner except as provided in this Declaration.

Section 6.3. Repairs and Maintenance of Walls. Each Owner shall, at such Owner's sole-cost and expense, make all repairs and perform all maintenance required upon the surface and non-structural elements of the portion of any Wall which serves as an interior wall of such Owner's Townhouse Unit; provided, however, that if any such repairs or maintenance are necessitated by reason of negligence or wrongful act of any other Owner or such Owner's tenants, agents, employees, guests or invitees, then such repairs or maintenance shall be made and performed at the sole cost and expense of such other Owner.

The Owners of Townhouse Units which share a Wall shall make or cause to be made from time to time all repairs and maintenance to (i) all Utilities, if any, located in or on the Wall to the extent, if any, such Utilities are common to their Townhouse Units, including but not limited to, sewer, water and electrical utilities, and (ii) the structural elements of the Wall, with the cost of such repairs or maintenance to be paid one-half (1/2) by each such Owner; provided, however, that if any such repairs or maintenance are necessitated by reason of the negligence or wrongful act on an Owner or an Owner's tenants, agents, employees, guests or invitees, then such repairs or maintenance shall be made and performed at the sole cost and expense of such Owner.

Neither Owner of the Townhouse Units which share a Wall shall have the right, except with the prior written consent of the other Owner, to (a) make any alteration or additions to the Wall or any part thereof, except non-structural interior alterations made within the Townhouse Unit located primarily upon the Lot owned by such Owner, or (b) take any action which might or will adversely affect the structural integrity or sound transmission prevention qualities of the Wall. To the extent of any Owner shall make any alterations or additions to the Wall, (i) such Owner shall, at such Owner's sole cost and expense, keep and maintain such alterations or additions in good condition and repair, and (ii) in the event of any fire or other casualty, the restoration and repair of such alteration shall be at the sole cost and expense of such Owner.

Section 6.4. Roof Repairs. The expense of maintaining, repairing and replacing the roof common to any group of Townhouse Units comprising a distinct building shall be equally shared by the Owners of such Townhouse Units. Should there be a disagreement as to the necessity, time, manner or

extent of maintaining, repairing or replacing such roof, the Board or its architectural committee shall resolve the dispute.

Section 6.5. Exterior Painting. All exterior painting shall be subject to the prior approval of the Board in its architectural committee as to harmony of color in relation to surrounding structures. All Townhouse Units comprising a distinct building shall be painted in the same color scheme. No such building shall be painted unless a majority of the Owners of Townhouse Units in such building shall agree thereto, and the decision of a majority of such Owners shall be binding on all such Owners; provided, however, that repainting in the then-existing color scheme incidental to repairs of any Townhouse unit shall not require agreement of any other Owner. All costs of painting shall be paid by the Owners of the Townhouse Units in the building painted in proportion to the aggregate amount of area painted on each such Owner's Townhouse Unit.

Section 6.6. Shared Porches. The cost of maintenance, repair and replacement of porches serving more than one Townhouse Unit shall be shared equally by the Owners of each such Townhouse Unit; provided, however, that if any such repair, maintenance or replacement is necessitated by reason of the negligence or wrongful act of any Owner or such Owner's tenants, agents, employees, guests or invitees, then such repair, maintenance or replacement shall be made and performed at the sole cost and expense of such Owner.

Section 6.7. Shared Utilities. The cost of maintenance, repair and replacement of Utilities (except the common water distribution system which shall be the responsibility of the Association), if any, serving, more than one Townhouse Unit shall be shared equally by the Owners of each such Townhouse Unit; provided however, that if any such repair, maintenance or wrongful act of any Owner or such Owner's tenants, agents, employees,

guests, or invitees, then such repair, maintenance or replacement shall be made and performed at the sole cost and expense of such Owner.

Section 6.8. Standard for Repairs Easements. Any and all repairs and maintenance which shall be performed 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 prosecuted to completion. Each Owner of any Lot, by acceptance of a deed therefore, whether it be so expressed in such deed or not, grants to all other Owners of a Townhouse Unit in the same distinct building a reciprocal easement to provide and permit the Owner of any Townhouse Unit in the same building and such Owner's agents or contractors reasonable access to that portion of the Wall and shared roof, Utilities or porch upon or within the Lot owned by such granting Owner for the purpose of making inspections and performing any maintenance or repairs including painting, under this Article VI. Such easement rights shall be exercised only as and to the extent reasonably necessary and in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the granting Owner's Lot.

Section 6.9. Enforcement. Should any Owner refuse to pay any costs or expenses as provided in this Article VI, the nondefaulting Owner shall be entitled to a lien on the Lot of the Owner so failing to pay to the extent of such costs or expenses. Payment of such costs or expenses may be enforced as a lien on such Lot through proceedings in the District Court in Johnson County, Kansas. Such nondefaulting Owner may also file a certificate of nonpayment of such costs and expenses in the Office of the Register of the Deeds of Johnson County, Kansas. Such lien shall continue in perpetuity from the date of recording of

notice thereof, unless suit shall have been instituted for collection of the costs or expenses, in which case the lien shall continue until payment in full or termination of suit.

ARTICLE VII

ARCHITECTURAL CONTROL

No building, fence, wall or other structure of any kind shall be commenced, erected, or maintained upon the Property, nor shall any exterior addition, change or alteration to any Lot or Townhouse Unit or other improvement be made, until the building plans and specifications showing the nature, kind, shape, height, color scheme, materials, landscaping, elevation, grade and location of the same shall have been submitted to, and approval in writing as to harmony of external design and location in relation to surrounding structures and topography by, the Board or by an architectural committee composed of three (3) or more representatives appointed by the Board as provided in the Bylaws of the Association. All replacements of all or any portions of a structure because of age, casualty, loss or other reason, including, without limitation, roofs, and siding, shall be the same architectural plan, finish and materials as the original structure unless the changes have been submitted to and approval in writing by the Board, or its designated architectural committee. In the event the Board, or its designated architectural committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval thereof shall be deemed to have been given. All work shall be completed as soon as reasonably possible after approval and shall be made in a good and workmanlike manner.

ARTICLE VIII

RESTRICTIVE COVENANTS

Section 8.1. Residential Use of Land. Except as provided in Section 8.3 of this Article VIII, each Lot is hereby restricted to residential use and uses related to the convenience

and enjoyment of such residential use. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuilding shall be used on any portion of the Property at any time as a residence, either temporary or permanent.

Section 8.2. Animals Prohibited. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lots; provided, however, that common household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose; and provided, further, that no more than two (2) dogs or cats (or combination thereof) shall be kept on any Lot. In no event shall any animals be kept on any Lot if they unreasonably disturb the Owner or residents of any other Lot or Townhouse Unit. All animals shall be confined on the Owner's Lot, and no animal shall be allowed or permitted on the Common Area except when on a leash or when in direct and constant control of the Owner thereof or a member of his family. Outside doghouses and other animal shelters must be approved by the Board or its architectural committee as provided in Article VII.

Section 8.3. Advertising and Business Activities Prohibited. No advertising signs (except one, of customary size, "For Rent" or For Sale" sign per Lot) or billboards (except political signs) shall be erected, placed, or permitted to remain on any Lot. No business, professional, trade or commercial activities of any kind whatsoever shall be conducted on any Lot or on any portion of any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his Townhouse Unit in accordance with the applicable ordinances of the City of Overland Park, Kansas; and provided, further, however, that the foregoing covenants shall not apply to the business activities, signs and billboards, if any of the Declarant so long as Declarant owns any Lot or of the Association in furtherance of its powers and purposes as set forth herein.

Notwithstanding any other provision of this Article VIII, it shall be expressly permissible for the Declarant and the Association and their contractors and sub-contractors to maintain, during the period of construction or reconstruction of any improvements, such structures and other facilities as in the sole opinion of the Declarant or the Board, as the case may be, are or may be reasonably required, convenient, or incidental to the construction or reconstruction of such improvements.

Section 8.4. Nuisances Prohibited. No noxious or offensive activity shall be carried on with respect to any Lot or Common Area, nor shall any unsightly objects or nuisances be erected, placed or permitted to remain on any Lot or Common Area, nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area except in trash receptacles provided by the Association, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood, nor shall any Lot or Townhouse Unit be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner of any Lot or any resident of any Townhouse Unit. Each Owner shall properly maintain his Lot and the improvements thereon in a neat, clean and orderly fashion. All equipment, trash cans, garbage cans, wood piles, and storage piles shall be kept screened by adequate planting or fencing, approved by the Association, so as to conceal them from view. All rubbish, trash, or garbage shall be regularly removed from each Lot and Townhouse Unit and shall not be allowed to accumulate thereon. No outside clothes lines shall be allowed and no trash burning shall be permitted anywhere within the Property.

Section 8.5. Planting and Gardening Prohibited. Except in individual patio areas, no planting or gardening shall be done. No fences, hedges, or walls shall be erected or maintained upon any Lot except such as they were planted or installed in

accordance with the initial construction of the improvements on any Lot or as approved by the Association.

Section 8.6. Antennas Prohibited. No exterior television or radio antennas or satellite dishes of any sort shall be placed, allowed or maintained on any Lot other than aerials for a master antenna system of common satellite dishes approved by the Association should any such master system or systems or common satellite dishes be approved and utilized.

Section 8.7. Automotive Repair Prohibited. No automotive repair (except minor routine maintenance) or rebuilding of any other form of automotive manufacture, whether for hire or otherwise, shall occur on the Property.

Section 8.8. Parking and Storage of Vehicles Prohibited. No commercial vehicle, airplane, boat, house trailer, boat trailer, or trailer or similar vehicle may be store upon the Property.

ARTICLE IX

INSURANCE

Section 9.1. Maintenance of Insurance. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to carry, maintain, and timely pay the premium or premiums on a policy of insurance on the improvements located on the Lot protecting such improvements against damage or destruction by fire, lightning, wind storm, hail, explosion, vandalism and miscellaneous mischief, and all other hazards as are generally carried in the area under standard extended coverage provisions for at least the full replacement cost of the improvements located on each Lot, excluding land, foundation and excavation costs. The said replacement costs may be determined by the Board and may be increased or decreased from time to time. Such insurance shall be placed with a company or companies approved by the Association and authorized to do business in the State of Kansas.

Each Owner covenants that the insurance policy as provided for herein shall provide for the payment of losses thereunder by the insurer to the Association or its nominee as insurance trustee for the benefit of each Owner, the holder of each first mortgage of record on the Owner's Lot, and the Association, as their interests may appear, and that such insurance policy shall provide that it shall not be cancelled without 30 days notice to the Association. The Owner shall, from time to time, furnish the Association with a certificate of insurance as to such insurance so maintained by the Owner.

Nothing herein shall preclude an Owner from obtaining whatever additional insurance he may desire, and it shall be the individual responsibility of each Owner to provide homeowner's liability insurance, theft, and other insurance covering personal property damage or loss.

Section 9.2. Repair and Restoration of Townhouse. In the event of damage or destruction of a Townhouse Unit or other improvement on a Lot due to fire or other disaster or cause, the Owner shall repair, rebuild and restore said improvement to a condition substantially as good as prior to the damage or destruction within a reasonable time from the date the damage or destruction occurs. In the event an Owner fails or refuses to repair, rebuild and restore such improvements as provided herein, each Owner on any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or conveyance, hereby irrevocably constitutes and appoints the Association his true and lawful attorney in fact, in his name, place and stead, and with full and complete authorization, right and power to collect the proceeds of the insurance policy described in Section 1 of this Article IX, in its sole name, and to cause the repair, reconstruction and restoration of such improvements and to pay for same with said insurance proceeds. An Owner shall have no claim against the Association in the event the Association collects the proceeds of

such insurance policy and uses same to repair, restore and reconstruct such improvement.

It is expressly acknowledged and agreed by each Owner that this Article IX is for the mutual benefit of all the Owners and is necessary for the protection of all said Owners. The proceeds of insurance policies required by this Article shall be used to repair, reconstruct or rebuild the Townhouse Units damaged or destroyed unless all Owners and their first mortgages agree in writing to not repair, reconstruct or rebuild.

Section 9.3. Lien for Premiums. The Association may, but shall not be required to make payment of insurance premiums on behalf of any Owner who becomes negligent in such payment. In the event that the Association makes such payment, then such payment and the cost thereof shall be a special assessment or charge to which Lot is subject under Article IV hereof, and, as part of such special assessment or charge, it shall be a lien and obligation of the Owner, and shall become due and payable in all respects, as provided in Article IV hereof.

Section 9.4. Rights of Mortgagees. Nothing herein contained shall be deemed to limit the rights of any first mortgagee of any Lot to require additional insurance on the Lot in which said first mortgagee may hold a security interest, provided that the requirements of this Declaration are met. Except as provided in Section 9.2 of this Article IX, the proceeds of casualty insurance payable to said first mortgagee shall be applied by said mortgagee first toward the payment of the costs of restoration or repair of the damaged improvements actually incurred. Any excess proceeds received, or if for any reason such restoration or repair does not take place, then the entire proceeds, may be applied in reduction of the mortgage indebtedness.

ARTICLE X

GENERAL PROVISIOS

Section 10.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 10.2. Severability. Invalidity of any of these covenants or restrictions by judgment or by court order shall in no way affect any other provisions hereof, and all other provisions hereof shall remain in full force and effect.

Section 10.3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated as provided in the next sentence. Subject to section 10.5 of this Article X this Declaration may be amended at any time, and may be terminated in its entirety at any time after thirty (30) years from the date it is recorded, by an instrument signed by not less than two-thirds (2/3) if all Owners and, if the Declarant is an Owner, by the Declarant. Any amendment must be duly executed, acknowledged, and recorded before the same shall be effective.

Section 10.4. Conveyance of Common Area. Notwithstanding any provision contained herein to the contrary, title to the Common Area shall be transferred to the Association by the Declarant free and clear of mortgages prior to the date the first government insured mortgage is placed on any Lot. Subject to Section 10.5 of this Article X, the Common Area may be dedicated, encumbered or conveyed, in whole or in part, only with the prior written consent of, and for such purposes and subject to

such conditions as may be agreed to by, two-thirds (2/3) of each class of members. Any conveyance or encumbrance of the Common Area, in whole or in part, shall be subject to easement for ingress and egress appurtenant to any Lot which does not have reasonable access except over the Common Area to be dedicated, conveyed or encumbered.

Section 10.5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require prior approval of the Federal Housing Administration or the Veterans Administration as applicable: (a) annexation of additional properties, (b) dedication of Common Area, and (c) amendment of this Declaration.

Section 10.6. Interpretation and Construction. Unless the context shall indicate otherwise, words importing the singular number shall include the plural, and vice versa, and words importing person shall include firms, partnerships, associations and corporations as well as natural persons. The Article and Section headings herein are for convenience only and shall not affect the interpretation or construction hereof.

Section 10.7. Limitation of Liability. Neither the Declarant, nor the Association, not any member of the Board, the architectural committee or any other committee shall be personally liable to any person for any act or omission in carrying out their duties, whether set forth herein or implied by law, with regard to the Property or any part thereof, except for their willful misconduct. Without limiting the generality of the foregoing, neither the Declarant, not the Association, nor any member of the architectural committee or the Board shall be personally liable to any person for any discretionary approval or disapproval of, or failure to approve any matter submitted for approval; for the adoption of any rules, regulations or guidelines; for the enforcement or lack of enforcement of any of the restrictions or assessments contained in this Declaration; or for any loss or

damage resulting from the criminal acts, other wrongful acts or omissions or negligence of any other person or entity. The Association shall maintain public liability insurance with regard to the Common Area, and, if reasonably available, directors and officers insurance, covering such risks and in such amounts as the Board shall deem reasonably necessary from time to time.

Section 10.8. Assignment of Declarant's Rights. The Declarant shall have the right and authority, by appropriate agreement, to assign, convey, transfer and set over to any person or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Declarant, and upon such assignment the assignee shall then for all purposes be the Declarant hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand the day and year above written.

EIGHTY THIRD STREET PROPERTIES

By: _____
Wayne "E" Smith, & Partner

By: _____
R.A. Akers, & Partner

By: _____
Thomas J. French, & Partner

By: _____
John Hanna, & Partner

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this 22nd day of June, 1987, before me, the undersigned, a Notary Public in and for said County and State, came Wayne "E" Smith, R. A. Akers, Thomas J. French and John Hanna, as partners in Eighty Third Street Properties, Kansas general partnership, and who are personally known to me to be such partners and the persons who executed the foregoing instrument on behalf of themselves and such partnership.

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

Notary Public

Print Name
Peggy Hragyil

My Appointment Expires:
