

QUIVIRA FALLS COMMUNITY ASSOCIATION

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND DEDICATION OF EASEMENTS**

(1990 Covenant Amendments, in bold and larger type, blended into the original 1974 Covenants)

THIS DECLARATION AND DEDICATION is made this 11th day of September, 1974 by KANSAS LAND DEVELOPMENT COMPANY, a limited partnership organized, existing and in good standing under the laws of the State of Kansas, referred to hereinafter as the "Declarant."

WHEREAS, the Declarant is the owner of the following described real estate:

All of the First Plat in Quivira Falls, a Subdivision to the City of Overland Park, Johnson County, Kansas, and,

WHEREAS, Declarant has constructed or intends to construct a planned unit development consisting of not more than fifty-three (53) residential townhouse units and certain common areas, community facilities and improvements on the above described real estate as more specifically described hereinafter; and

WHEREAS, Declarant is also the owner of other real estate located in Quivira Falls Subdivision to the City of Overland Park, Johnson County, Kansas, and abutting lands that are not platted as of this date which may be developed by Declarant for additional residential townhouse units, common areas, community facilities, and improvements which, when added to the townhouse units constructed upon the above described real estate, will not exceed a maximum of one thousand (1,000) townhouse units, and which will be subject to the covenants, conditions, restrictions and easements set forth hereinafter by following the procedure set forth hereinafter; and

WHEREAS, Declarant desires to place certain covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, upon the above described real estate for the benefit of the

Declarant, its successors, assigns and its future grantees, to protect the value and desirability of the planned unit development project to be known as “Quivira Falls,” and all additions thereto, and

WHEREAS, Declarant has caused to be incorporated under the laws of the State of Kansas, as a Not-For-Profit corporation, Quivira Falls Community Association for the purpose of exercising the functions of a community association as set forth hereinafter for the benefit of said real estate and all additions thereto.

NOW, THEREFORE, Declarant hereby declares that the real property referred to and described above, and such additions thereto as may hereafter be made, pursuant to Article Two hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the real property, or a part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE ONE

Definitions.

The following words when used in this Declaration or any supplemental declaration shall have the following meanings:

1. “Association” shall mean and refer to Quivira Falls Community Association, a non-profit corporation, formed pursuant to the Non-Profit Corporation laws of the State of Kansas, by Articles of Incorporation filed with the Secretary of State, for the State of Kansas, on the 9th day of September, 1974, and with the Registrar of Deeds for Johnson County, Kansas, on the 11th day of September, 1974, in Book 994, at page 627.

2. “Real Estate” shall mean and refer to the following described real estate:

Blocks one thru seven of Quivira Falls
Subdivision to the City of Overland Park,
Johnson County, Kansas,

and such additional real estate as may be made subject to this Declaration or any supplemental declaration prepared and tiled for record pursuant to the provisions of Article Two hereof.

3. “Common area and facilities” shall mean all of that part of the real estate and all improvements located thereon owned by the Association for the common use and enjoyment of the residents of Quivira Falls Subdivision.

Common area and facilities shall include:

a. All real estate owned in fee simple by the Association evidenced by warranty deed or deeds from the Declarant to the Association, recorded in the office of the Registrar of Deeds for Johnson County, Kansas.

b. All Community buildings, swimming pools, tennis courts, playground equipment, recreational facilities, structures, trees, landscaping, lighting equipment, decorative equipment or other improvements located upon real estate owned by the Association.

c. All paved private drives, streets and open parking areas located upon real estate owned by the Association.

d. All installations of central services for the benefit of more than one owner such as television antennas, incinerators, trash receptacles, pipes, wires, conduits, sewers, water lines, and other public utility lines and facilities situated thereon.

e. All easements, rights and appurtenances belonging thereto necessary to the existence, maintenance and safety of the project.

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

4. “Lot” shall mean and refer to the real estate on which is located one townhouse unit.

5. “Townhouse unit” shall mean and refer to one single-family townhouse residential unit which may be a detached single-family residential structure or may be joined together with at least one additional single-family townhouse residence by a common wall, or walls, and/or roof and/or foundation. The exterior boundary line of each townhouse unit shall be the exterior line of its foundation, except where a townhouse unit has a fireplace which protrudes beyond the foundation line, in which case the exterior boundary shall include the fireplace and chimney. The townhouse unit may also include one non-attached garage for each unit.

6. “Owner” shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to a lot and townhouse unit, including contract sellers. The term

“owner” shall not mean any mortgagee or trustee under a deed of trust unless and until such mortgagee or trustee has acquired fee simple title to a townhouse unit.

7. **“Member”** shall mean and refer to each owner as provided herein in Article Three.

8. **“Mortgagee”** shall mean and refer to any such person, persons, or entities under a first deed of trust or first mortgage secured by a lot and townhouse unit.

9. **“Declarant”** shall mean and refer to Kansas Land Development Company, a Kansas limited partnership, authorized to do business in the State of Kansas.

10. **“Quivira Falls”** shall mean and refer to the Subdivision in Overland Park, Kansas, approved for development by Kansas Land Development Company within the approximately two hundred eight (208) acre tract lying northwest of 111th Street and Quivira Road.

ARTICLE TWO

Property Subject to this Declaration: Additions thereto:

1. **Existing Property.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as of the date of this Declaration is:

Blocks one thru seven of Quivira Falls
Subdivision to the City of Overland Park,
Johnson County, Kansas.

2. **Additions to Existing Property.** Declarant reserves the right to add additional real estate and townhouse units to this Declaration in any of the following manners:

a. If Declarant is the owner of any real estate located in Quivira Falls Subdivision to the City of Overland Park, Johnson County, Kansas, or non-platted land abutting said Subdivision, Declarant may add any part thereof to this Declaration without the consent of Class A members of the Association at any time until July 1, 1994, by filing of record a supplementary declaration of covenants, conditions and restrictions, which shall subject said additional real estate and all improvements thereon to all covenants, conditions, restrictions and easements set forth in this Declaration; provided, however, that the total number of additional townhouse units constructed, upon said additional real estate so added to this Declaration and the units constructed upon the real

estate described in Article One may not exceed one thousand (1,000) in number. Said supplementary declaration may contain such additional covenants, conditions and restrictions applicable solely to said additional real estate as may be necessary or desirable as determined by the Declarant. In no event, however, shall such supplementary declaration modify or add to the covenants established by this declaration for the existing property without the written consent, obtained after at least thirty (30) days notice, of sixty percent (60%) or more of the Class A memberships and all Class B memberships of the Association.

b. Upon a merger or consolidation of the Association with another not for profit corporation (such as a condominium association adopted with regard to other property within Quivira Falls Subdivision which might at a future time be developed as a condominium) as provided in its Articles of Incorporation, its properties, rights and obligations may by operation of law, be transferred to another surviving or consolidated not for profit corporation, or, alternatively, properties, rights and obligations of another not for profit corporation may, by operation of law, be added to the properties, rights and obligations of the Association as the surviving not for profit corporation pursuant to a merger. The surviving or consolidated not for profit corporation may administer the covenants, conditions and restrictions established by this Declaration for the existing property, together with the covenants and restrictions established upon any other property as one project. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants, conditions and restrictions established by this Declaration for the existing property and for any additions thereto established by a supplementary declaration.

ARTICLE THREE

Membership

1. **Membership and Voting Rights in the Association.** Every person or entity who is an owner of fee simple interest in one or more lots and townhouse units shall be a member of the Association. Ownership of such townhouse unit shall be the sole qualification for Class A membership.

2. **Types of Membership in the Association.** The Association shall have three classes of voting memberships:

a. Class A. Class A members shall be all owners except the Declarant. Class A members shall be entitled to one vote for each lot and townhouse unit in which they hold the interest required for membership by Article Three, paragraph 1. When more than one person holds such interest in any lot and townhouse unit, all such persons shall be members and the vote for such unit shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any one unit.

b. Class B. Each Class B membership shall be issued to the Declarant. Three Class B memberships shall be issued to Declarant for each lot that Declarant proposes to develop with a townhouse unit. Each Class B membership shall be entitled to one vote. As each townhouse unit is sold by Declarant, the Buyer shall receive a Class A membership, and three Class B memberships shall be cancelled.

All Class B memberships outstanding shall be surrendered by the Declarant to the Board of Directors of the Association for cancellation, upon the happening of either of the following events, whichever occurs first:

i When one thousand (1,000) townhouse units have been constructed and sold upon the real estate described in Article One, paragraph 2, of this Declaration, and such additional real estate as may be made subject to this Declaration or any supplemental declaration prepared and filed for record pursuant to the provisions of Article Two thereof; or

ii. July 1, 1994

Upon surrender and cancellation of all Class B memberships, Declarant shall have no right, title, or interest in or to the common area and facilities and any and all other personal property or real estate owned by the Association. Upon surrender and cancellation of each Class B membership, the Declarant shall have no right to vote such membership at any regular or special meeting of the Association for any purpose whatsoever.

c. Class C. Class C memberships shall be all of the First Mortgagees. Class C members shall be entitled to one (1) vote for each lot and townhouse unit which secures a mortgage or deed of trust. Class C memberships shall be surrendered to the Association and cancelled upon discharge of a mortgage or deed of trust by a mortgagee. Only one (1) Class C membership shall be

outstanding with regard to any lot and townhouse unit. Class C members shall only be entitled to vote on matters specifically enumerated hereinafter.

3. Quorum, Proxies, Voting.

a. Ten percent (10%) of the outstanding Class A and all of the Class B memberships of the Association entitled to vote, represented in person or by proxy, shall constitute a quorum at any meeting of the Association.

b. At all meetings of the Association, a Class A member may vote in person or by proxy executed in writing by such member. Such proxies shall be filed with the Secretary of the Association before or at the time of a meeting. No proxy shall be valid after twelve (12) months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his lot.

No one owner of a Class A membership may vote more than one additional vote by proxy.

4. Articles of Incorporation and Bylaws. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be as set forth in its Articles of Incorporation and Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting, and quorum requirements are in conflict with any provisions of Kansas laws applicable to not for profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Kansas laws shall control.

ARTICLE FOUR

Common Areas and Facilities - Rights of Owners and of the Association

1. **Enjoyment.** Subject to Article Four, paragraph 2, each resident of Quivira Falls shall have a right and easement of enjoyment in and to the common areas and facilities and such easements shall be appurtenant to and shall pass with the title to each lot and townhouse unit. The Class A membership in the Association of each owner shall be deemed to be conveyed or encumbered with the deed or mortgage applicable to each lot and townhouse unit, even though such interest is not expressly mentioned or described in the conveyance, mortgage or other instrument.

Each owner may use the common area and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other owners.

2. Regulations and Suspension of Rights. The rights and easements of enjoyment created hereby shall be subject to the following:

a. The right of the board of directors of the Association to prescribe rules and regulations and fees governing the use, operation and maintenance of all common areas and facilities, including all swimming pools, tennis courts, and boat-camper and recreational vehicle storage area and other recreational facilities.

b. The right of the Association to suspend the right of any owner to use all said recreational facilities located upon common areas, and the right of the Association to withhold and not provide services and maintenance normally provided by the Association, for any period during which any assessment against said owner remains unpaid.

c. The right of the Association to charge reasonable admission and use fees for the use of any of said recreational facilities to defray costs of the operation thereof.

d. The Common area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Class A members who are voting in person or by proxy at the meeting duly called for said purpose, written notice of which shall be sent to all Class A members not less than thirty (30) days in advance of the meeting setting forth the purpose of the meeting, except that the Association shall have the right to dedicate or transfer part of the common area to any to any public agency, authority or any public utility to provide necessary utility services to the owners.

e. The right of the board of directors of the Association to fix penalties for the violation of said rules and regulations.

f. The right of the Association to charge a reasonable fee of up to Twenty-five Dollars (\$25.00) per year for each dog or cat belonging to an owner of a townhouse unit.

g. The right of the Association to borrow money for the benefit of the Association and the owners of townhouse units provided however, the repayment of such loans shall not be or become the personal obligation of the owners of townhouse units.

h. The right of the Association to rent the upper floor of the Association club house facility to Kansas Land Development Company or any affiliated or successor development company for a period of up to ten (10) years for a rental of Two Thousand One Hundred Sixty Dollars (\$2,160.00) per year and such other reasonable terms as the Association and developer deem appropriate.

3. **No Restrictions on Access to Units.** The board of directors of the Association may not, in any event, revoke, limit, restrict, or suspend in any way, the right of any owner to use and enjoy the private drives, streets and parking areas located upon the real estate owned by the Association. As a right running with the real property, ownership of each lot and townhouse unit shall include the right to use and enjoy all walks, pavement, driveways, parking areas, entrances and exits owned by the Association. There shall always be access by other pedestrians and vehicles to and from each lot and townhouse unit to a public street or to a private street leading to such public street.

ARTICLE FIVE

Covenant for Maintenance Fees or Charges

1. **Creation of the Lien and Personal Obligation of Fees or Charges; Regular and Special Fees and Charges.** Each owner, by acceptance of the deed therefore, whether or not it shall be so expressed in any such deed of conveyance for each unit owned, hereby covenants and agrees, and shall be deemed to covenant and agree to pay to the Association or its nominee:

- a. Regular fees or charges; and
- b. Special fees or charges for capital improvements to be fixed, established and collected from time to time as hereinafter provided:
- c. Regular Fees or Charges shall be defined as (1) a base monthly assessment covering all required services as provided by Article Five and (2) fees for additional services provided by the Association not covered by the base

monthly assessment which may be established from time to time by the Board of Directors to meet the purposes of the Association.

d. Special Fees or Charge shall be defined as special fees or charges which may be levied from time to time for the purposes of defraying in whole or in part the cost of any major requires, construction or reconstruction of any capital improvement, or for other services not covered by the regular fees or charges.

2. Purpose of Regular Fees or Charges.

a. The base monthly assessment levied by the Association shall be used for the following purposes:

1) Routine repair, maintenance and care of private streets, cul de sacs and driveways, exterior building surfaces, roof, trees, shrubs, grass, utility lines and conduits, outdoor lighting equipment, walks and other exterior improvements, including exterior fence, as set forth in Article Seven of this Declaration.

2) Ad valorem and other taxes on land and improvements owned by the Association.

3) Management (including necessary legal and accounting expenses of the Association).

4) Contingency reserves as determined from time to time by the Board of Directors of the Association.

5) Insurance premiums for all insurance secured by the Board of Directors of the Association pursuant to this Declaration. Until applicable Kansas law allows blanket policies of casualty insurance as set forth hereinafter in this Declaration, such insurance premiums to be paid from regular fees and charges shall be limited to insurance

premiums for public liability and property damage insurance covering all common areas and facilities and workman's compensation insurance to the extent deemed necessary by the board of directors to comply with any and all applicable laws. Regular Fees and charges may be used for the payment of insurance premiums for casualty insurance applicable to each lot and townhouse unit, if a blanket policy of casualty insurance is available under applicable Kansas law, and if the board of directors of the Association elects to convert to a blanket policy of actuality insurance all as set forth hereinafter.

- 6) The payment of such other charges and expenses as may be elsewhere required or authorized by this Declaration or that the board of directors of the Association may from time to time determine necessary or desirable to meet the purposes of the Association as stated in its Articles of Incorporation, By-laws, and by this Declaration.**

b. The fees for additional services levied by the Association shall be used for services provided by the Association that are not covered by the base monthly assessment. These fees shall be established from time to time as the board of directors determine necessary or desirable to meet the purposes of the Association. Such fees for additional services shall require an affirmative vote of fifty-one percent (51%) of the Class A memberships who are present and voting in person or by proxy at a special meeting called for the purpose of considering the fees for additional services after not less than thirty (30) days and not more than fifty (50) days notice in writing to each member of the Association, stating the time, purpose and place of said meeting. Such fees for additional services

shall be due and payable at the time and in the manner specified in the adopted proposition.

3. Regular Fees or Charges: limits Thereon. Prior to July 1 of each calendar year, the board of directors of the Association shall prepare a Budget for the ensuing twelve (12) months and such Budget shall cover the estimated costs of maintaining the common areas and performing all of the obligations and exercising the powers established under this Declaration. On the basis of this Budget, the base monthly assessments and any fees for additional services for each owner of each townhouse unit for the ensuing year shall be established by the Association. Base monthly assessments as estimated under such Budget shall be borne equally by the owners of the units: Fees for additional services need not be borne equally. All computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with accepted accounting practices and the Association shall employ a firm of Certified Public Accountants to render a written audit of its operations for each calendar year and a copy of such written audit shall be available to the owners and mortgagees of each unit. Upon reasonable notice, mortgagees and owners shall have the right to examine the books and records of the Association at the offices of the Association.

Until July 1, 1974, the maximum regular fees or charges shall be \$35.00 per unit per month.

a. From and after July 1, 1975, the maximum base monthly assessment may be increased each year by the board of directors of the Association without a vote of the memberships in conformance with the annual rise, if any, of the Kansas City Consumer Price Index for Urban Wage Earner's and Clerical Workers, All Items, published by the United States Department of

Labor, Bureau of Labor Statistics for the most recent reporting period preceding the effective date of the increase in Association fees.

b. From and after June 1, 1975, the base monthly assessment may be increased, each year, by the board of directors of the amount of increase, if any, authorized by the Consumer Price Index formula set forth above, and an additional three percent (3%) above the fees or charges for the previous year without a vote of the memberships.

c. From and after July 1, 1975, all increases above the amount authorized by the Consumer Price Index formula and three percent (3%) shall not be effective unless approved by the board of directors and sixty percent (60%) of the votes of Class A memberships and all Class B memberships, who are voting in person or by proxy at a meeting duly called for said purpose, written notice of which shall be sent to all Class A and Class B members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.

d. Regular fees or charges shall remain constant from July 1 through June 30 at of each year.

4. Special Fees or Charges for Capital Improvements. In addition to the monthly fees or charges authorized by paragraph 3, Article Four hereof, the board of directors may levy a special fee or charge for the purpose of defraying in whole or in part the cost of any construction or reconstruction and estimated repairs and replacements of any capital improvements such special fees or charge shall, however, require an affirmative vote of fifty-one percent (51%) of the Class A memberships, and all of the Class B memberships who are present and voting in person or by proxy at a special meeting called for the purpose of considering the special fee or charge after not less than thirty (30) days and not more than

fifty (50) days notice in writing to each member of the Association, stating the time, purpose and place of said meeting. Such special fees or charges shall be due and payable at the time and in the manner as approved by fifty-one (51%) of the Class A memberships and all of the Class B memberships voting at said meeting.

5. Uniform Rate of Fees or Charges. Both regular and special fees and charges must be fixed by the board of directors of the Association at a uniform rate for all townhouse units.

6. Date of Commencement of Regular Fees or Charges; Due Date. Regular fees or charges shall be due and payable by the Association on the first day of each month in equal monthly installments. All townhouse unit owners of any completed townhouse unit other than the Declarant, its successors or assigns, shall be obligated to pay assessments, when the warranty deed conveying fee simple title to the completed townhouse unit has been issued and delivered. Assessments may also be paid by, for and on behalf of owners by their mortgagees or holders of a deed for trust under such terms and agreements as the Association may from time to time deem appropriate by action of its board of directors.

7. Duties of the board of directors with Respect to Fees or Charges.

a. At least thirty (30) days prior to July 1, 1975 and at least thirty (30) days in advance of each annual assessment period of July 1 through June 30 thereafter the board of directors shall, by resolution, determine the amount of the regular fees or charges pursuant to Article Five, paragraph 3. Written notice of such regular fees or charges shall be given to each townhouse unit owner. Failure of the Association to give written notice of any regular fee or charge prior to July 1 of any year shall not invalidate any such fee or charge levied thereafter, not

shall failure to levy any regular fee or charge for any one year affect the right of the Association's board of directors to do so for any subsequent year.

Any townhouse unit owner who becomes subject to fee or charge subsequent to July 1 of any year by receiving a warranty deed for said townhouse unit shall commence payment of such fee or charge on a pro rata basis commencing on the date said deed is issued and delivered.

b. The board of directors shall upon demand, at any time, furnish to any owner liable for fees or charges hereunder a certificate in writing signed by the president or secretary of the Association setting forth whether all fees or charges have been paid to date. A reasonable charge may be made by the board of directors for the issuance of such certificate. Such certificate shall be recorded in the office of the Registrar of Deeds for Johnson County, Kansas and upon recording shall constitute conclusive evidence of payment of any fee or charge for the period stated in the certificate.

c. The Association, acting by its board of directors, shall enforce payment of the fees or charges in accordance with the provisions of paragraph 8 of this Article Five.

8. Effect of non-payment of Fees or Charges, the Personal Obligation of the Owner; the Lien; Remedies of Association; Maintenance and Enforcement of Lien by Declarant.

a. If any fee or charge or any part thereof is not paid on the date when due, then the unpaid amount of such fee or charge shall become delinquent and shall there upon be a continuing lien on the lot and townhouse unit of the non-paying owner, and shall bind such unit in the hands of the then owner, his heirs, executors, administrators, successors and assigns. No owner may waive, have waived, or otherwise escape liability for the fees or charges provided herein by non-use of any common areas and facilities owned by the Association or by abandonment of his lot and townhouse unit.

b. If any fee or charge or part thereof is not paid within thirty (30) days after the due date, the same may bear interest thereon at one and one-half percent (1 ½%) per month (eighteen percent (18%) per annum) if the board of directors by resolution, elects to assess interest on any such non-paid fee or charge.

c. The Association, acting by its board of directors, may by resolution elect to commence an action in the District Court of Johnson County, Kansas, against the owner personally obligated to pay the same, and the owner of record of any lot and townhouse unit, in the event the same has been transferred, to enforce payment of said delinquent fee or charge and to foreclose the lien against said lot and townhouse unit. The lien against any lot and townhouse unit shall continue for period of two (2) years from the date of delinquency and no longer unless such action shall have been filed. In the event such action is filed within one year from the date of delinquency, the lien shall continue until termination of the action and until sale of the lot and townhouse unit under the execution of judgment establishing the same.

9. Subordination of the Lien to Mortgages; Notice of Non-Payment to Mortgages.

The lien of the fees or charges, regular and special, provided for herein shall be subordinate and inferior to the lien of any first mortgage or deed of trust now or hereafter placed upon any lot and townhouse unit subject to fees or charges, provided, however, that such subordination shall apply only to the fee or charge which becomes due and payable prior to the sale, whether public or private, of such unit, pursuant to a decree of foreclosure of any such mortgage or pursuant to the terms and conditions of any such deed of trust or a deed in lieu of foreclosure. Said sale or deed in lieu of foreclosure shall not relieve such unit from liability for the amount of any fees or charges thereafter becoming due, nor from the lien of any such subsequent fee or charge. Any holder of a first mortgage or deed of trust who acquires title of any lot or townhouse unit pursuant to foreclosure or deed in lieu of foreclosure, shall take title free of any claims for unpaid fees or charges against the lot and townhouse unit which accrued prior to the date title is acquired by said holder of the mortgage or deed of trust except for claims for a pro rata share of such unpaid taxes or charges resulting from a pro rata reallocation of such unpaid fees or charges to all lots and townhouse units, including the lot and townhouse unit so acquired by the holder of the mortgage or deed of trust.

10. Notice. The mortgagee under each townhouse unit will be given written notice by the Community Association if the owner is in default of the payment of any dues or assessments

imposed by the Association or is in default with respect to any other obligation imposed by the Association, and the mortgagee will receive written notification from the Association of any default which is not cured within thirty (30) days.

11. Exempt Property. The following property subject to this Declaration and dedication shall be exempted from the fees, charges, and liens created herein:

- a. All property dedicated to and accepted by any municipality or public utility for public use and purposes.
- b. All common areas and facilities.
- c. All townhouse lots and units owned by the Declarant until after the same are completed and ready for occupancy for not less than ninety (90) days.

ARTICLE SIX

INSURANCE

1. Insurance to be Obtained and Maintained by Association. The board of directors of the Association shall obtain and maintain to the extent reasonable available, at the least the following:

a. Casualty insurance naming the Association as insured for the benefit of the owner in an amount equal to the full replacement value (i.e., one hundred percent (100%) of “replacement cost” exclusive of land, foundation and excavation), respectively, of the improvements located upon real estate owned by the Association with an “agreed amount” endorsement, without deduction or allowance for depreciation (as determined annually by the board of directors with the assistance of the insurance company affording such coverage) such coverage to afford protection against at least the following:

- 1) Loss or damage by fire or other hazards covered by the standard extended coverage endorsement;
- 2) Such other risks as shall customarily be covered with respect to property similar in construction, location and use, including but not limited to, cost of demolition, vandalism,

malicious mischief, windstorm, water damage, machinery explosion or damage, and such other insurance as the board of directors may from time to time determine; and

b. Public liability insurance, in such amounts and in such forms as may be considered appropriate by the board of directors, including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile, liability for property of others, and any and all other liability incident to the ownership and/or use of the common area and facilities, respectively, such policy shall contain a “severability of interest” endorsement which shall preclude the insurer from denying the claim of an owner because of the negligent acts of the Association or the owners: and

c. Workmen’s compensation insurance to the extent necessary to comply with any applicable law: and

d. 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

e. 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 owners shall be maintained naming the Association as insured in an amount equal to no less than one and on-half (1 1/2) times the Association’s annual operating expenses and reserves.

f. Such other policies of insurance, including blanket policies of insurance for townhouse units if authorized by applicable Kansas law and by the board of directors of the Association.

2. Insurance to be Obtained and Maintained by Townhouse Unit Owners. The owner of any lot and townhouse unit shall obtain and maintain casualty insurance, insuring all improvements owned by the 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 land, foundation and excavation), respectively, with an “agreed amount” endorsement without deduction or allowance for depreciation, and the insurer shall waive any “increase of hazard” provision of its policy and any “apportionment of loss” provision of its

policy in the event there is any other insurance insuring the same risk. All premiums for such insurance shall be paid by each owner. Such insurance policies shall be in a form acceptable to the board of directors of the Association or its manager and shall include a loss payable clause in favor of Quivira Falls Community Association, Inc., as Insurance trustee, for the benefit of each owner and their mortgagees, as their interests may appear, or jointly, to the townhouse unit owner, the Quivira Falls Community Association, Inc., and the mortgagee. In the event of loss, each owner shall give notice to the board of directors of the Association or its manager, and the board of directors of the Association or its manager shall be authorized to make proof of loss if the same is not promptly made by each owner. All insurance companies are authorized to make payments for such loss directly to the Quivira Fall Community Association, Inc as insurance trustee for each owner and their mortgagee as their interest may appear. The Association, as insurance trustee, shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies nor for the failure to collect any insurance proceeds nor for the form or content of the policies. The sole duty of the Association shall be to receive such proceeds, as are paid and hold the same in trust for the purposes stated herein for the benefit of the townhouse unit owners and their respective mortgagees as their interests may appear. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of any mortgage debt any insurance proceeds. For purposes of administering all provisions of the Declaration relating to insurance, the Association acting by and through its board of directors is irrevocably appointed agent for each unit owner and for each mortgagee, holder of deed of trust, or other lien upon a townhouse unit. The Association, acting by its board of directors or its duly authorized manager, shall have the authority to adjust all claims arising under all insurance policies and the authority to execute and deliver releases upon the payment of claims. The proceeds of insurance collected on account of any casualty by the Association as insurance trustee shall be disbursed only in payment of the costs of replacement, reconstruction, or repair of the damaged improvements. If the cost of replacement, reconstruction or repair of an individual townhouse unit shall exceed the amount of insurance proceeds received by the insurance trustee, such excess shall be a special assessment against said lot and townhouse unit to be paid by the owner of said lot and townhouse unit. If the cost of replacement, reconstruction or repair of an individual townhouse unit shall so exceed the amount received from said insurance proceeds, said excess cost shall be paid by the unit owner to the

Association as insurance trustee to be added to the funds received from said insurance proceeds and the same shall be disbursed for reconstruction or repair of the unit. The board of directors of the Association may employ an architect or other qualified person who shall be in charge of all reconstruction and repair of all improvements. Each request for disbursement of insurance proceeds held by the Association as insurance trustee shall include a certificate of the architect or other qualified person employed by the Association to the effect that all work then completed has been performed in accordance with plans and specification approved by the board of directors of the Association and all applicable building codes. All insurance policies shall be subject to the extent available to the following provisions:

a. All policies shall be written with a company or companies licensed to do business in the State of Kansas holding a rating of BBB+ or better in Best's Insurance Guide, or some other equivalent insurance guide reference directory.

b. Exclusive authority to negotiate losses under each policy shall be vested in the board of directors of the Association, as agent or trustee for the townhouse unit owner and his mortgagee.

c. All policies shall provide that such policies may not be canceled or substantially modified including cancellation for nonpayment of premium without at least thirty (30) days prior written notice to the townhouse unit owner, the board of directors, the Association, and the mortgagee.

d. All policies shall provide that the mortgagee will be notified by the insurance company of any claim for recovers of damages exceeding One Thousand Dollars (\$1,000.00).

e. All policies shall contain a waiver of subrogation by the insurer as to claims against the Association, the board of directors, the owner of any individual townhouse unit and/or their respective agents, employees and tenants.

The owner of any lot and townhouse unit may obtain additional insurance at their own expense, including liability insurance to cover accidents or damage to persons or property occurring within his or her own individual townhouse unit. Each individual townhouse unit owner may purchase insurance upon his own personal property and any additional improvements located within his individual townhouse unit. Such insurance shall contain the same waiver of subrogation provisions set forth above. In the event applicable Kansas insurance laws and regulations authorize the Association to purchase one or more blanket policies of casualty insurance, naming the Association

as insured for the benefit of every owner and mortgagee, the board of directors may elect to purchase and maintain such insurance. In such event, the provisions of this Declaration relating to individual policies of casualty insurance shall no longer apply. Such policy or policies of blanket insurance shall, however, in any event provide coverage for each townhouse unit upon such terms and conditions as the board of directors of the Association may deem appropriate, provided however, that in any event, the coverage shall be not less than the coverage required by this Declaration applicable to individual policies of casualty insurance. Annually, the Association may require evidence of insurance coverage, with all appropriate endorsements and provisions as specified herein from each owner.

ARTICLE SEVEN

Management, Maintenance, Repairs, Alterations and Improvements

1. Manager or Managing Agent. The management, repair, alteration and improvement and all improvements constructed upon real estate owned by the Association and all other property as set forth hereinafter as the responsibility of the Association, shall be the responsibility of the board of directors of the Association. The operation of the Homeowners Association may be overseen by a professional manager employed by the Association. Said Board of Directors may delegate all or any portion of its authority to a manager or managing agent. Such delegation shall be evidenced by a management contract which shall not exceed three (3) years in duration and which shall set forth such duties and responsibilities as the board of directors may from time to time determine.

2. Maintenance, Repair, Alteration and Improvements.

a. By the Association:

From the proceeds of fees and charges received pursuant to Article Five of this Declaration, the Association shall provide routine repair, maintenance and care for private streets, cul de sacs and driveways, exterior building surfaces, roofs, walks and other exterior improvements including exterior fence and all trees, shrubs and grass within the common areas. The frequency and the materials to be used in the performance of all such routine repair, maintenance and care shall be in the sole discretion of the board of directors of the Association and shall not

be subject to the control of any owner. In the event that the need for such maintenance, care or repair or extraordinary services to any townhouse unit is caused by the modification of the original design of a townhouse unit, the addition of improvements by the owner, or through the willful or negligent act of an owner, family, guests or invitees, the cost of such maintenance, care, or repair not covered by insurance shall be added to and become an additional fee or charge, in addition to the fee or charge to which such owner's unit is subject, and must be paid by or on behalf of said owner within thirty (30) days after written demand thereof from the board of directors of the Association and shall be enforceable and secured by a lien as in the case of all other fees or charges.

b. By Individual Owners:

The responsibility of each individual owner shall be as follows:

To maintain, repair and replace at his expense all portions of his lot and townhouse unit constructed thereon which are not the responsibility of the board of directors of the Association, including, but not limited to, all appliances, heating, plumbing, electrical, air conditioning, air conditioning compressor and related facilities, fixtures or installations, and any portion of any utility services located within the lot and townhouse unit constructed thereon, including all patios, grass, trees, shrubs and all other improvements located within a fenced yard or patio. Each owner shall be responsible for the repair, maintenance, care, painting, and replacement of all patios, interior patio fences, windows and other glass surfaces, doors, and all interior improvements and fixtures which are appurtenant to each townhouse unit, including, without limitation, responsibility for all breakage, damage, malfunction, painting, repair and maintenance thereof.

3. Improvements and Alterations. No owner may paint or otherwise decorate or change the appearance of any exterior portion of his townhouse unit or fence without the prior written consent of the board of directors of the Association. Except for original construction by the Declarant, and except for purposes of maintenance and repairs as provided in this Declaration, no building, fence, wall, sports equipment, machinery, or other improvements or structures shall be commenced, erected, placed, moved or maintained upon the real estate, the lot of any individual townhouse unit, nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the complete plans and specifications showing the precise and exact nature, kind, shape, height, setback, materials, color and location of the same shall have been

submitted to and approved in writing by the board of directors of the Association or by an architectural control committee appointed by the board of directors.

The architectural control committee, if appointed by the board of directors, shall be composed of three (3) or more natural persons designated from time to time by the board of directors and such persons shall serve at the pleasure of the board of directors.

In the event the board of directors fails to appoint an architectural control committee, then the board of directors shall constitute the committee. The affirmative vote of a majority of the members of the architectural control committee shall be required in order to adopt or promulgate any rule or regulation or to make any finding, determination, ruling or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Declaration.

a. Approvals. Upon approval of the architectural control committee of any plans and specifications submitted pursuant to the provisions of this Declaration and upon approval by the applicable governmental agency authorized to issue building permits, a copy of such plans and specifications and a copy of all building permits as approved shall be deposited among the permanent records of the Association and a copy of such plans and specifications and building permits bearing such approval in writing, shall be returned to the applicant submitting the same. In the event the committee fails to take action regarding any plans and specifications which may be submitted to it pursuant to the provisions of this Declaration within sixty (60) days after such plans and specifications (and all other material and information required by the committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with, provided the plans and specifications are in compliance with all other provisions of the Declaration.

b. Limitations. Construction or alterations in accordance with plans and specifications approved by the architectural control committee shall be commenced within six (6) months following the date upon which the same are approved, and shall be substantially completed

within twelve (12) months following the date of commencement or within such longer period as the committee shall specify in its approval. In the event construction is not commenced within said period, then approval of the plans and specifications by the committee shall be conclusively deemed to have lapsed and compliance with the provisions of this article shall again be required. There shall be no deviation from plans and specifications approved by the committee without the prior consent in writing of the committee. Approval for use on any lot of any particular plans and specifications or design shall not be construed as a waiver of the right of the committee to disapprove such plans and specifications or any elements or features thereof in the event such plans and specifications are subsequently submitted for use upon any other lot or lots.

c. Certificate of Compliance. Upon the completion of the construction or alteration of any building, fence, wall or other improvements or structure in accordance with plans and specifications approved by the architectural control committee, the committee shall, at the request of the owner thereof, issue a certificate of compliance which shall be prima facie evidence that the building, fence, wall or other improvements or structures referred to in said certificate have been approved by the committee and constructed or installed in full compliance with the provisions of this article, and with such other provisions and requirements of this Declaration as may be applicable.

d. Rules and Regulations. The architectural control committee 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 such statements of policy, standards, guidelines and/or establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this article or any other provision or requirement of this Declaration. The architectural control committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this article. The decisions of the architectural control committee shall be final except that any owner who is aggrieved by any action or forbearance from action by the architectural control committee may appeal the decision of the architectural control committee to the board of directors of the Association, and, upon the written request of such owner, shall be entitled to a hearing before the board of directors. The vote of a majority of the board of directors shall be required to reverse or otherwise modify any decision of the architectural control committee.

e. Enforcement – Right to Remove or Correct Violations. In the event any building, fence, wall, sports equipment or other improvements or structure shall be commenced, erected, placed, moved or maintained upon any lot, otherwise than in accordance with the provisions and requirements of this article, then the same shall be considered to have been undertaken in violation of this article and without the approval of the architectural control committee required herein, and, upon written notice from the board of directors or the architectural control committee, such building, fence, wall, sports equipment or other structure or improvements shall be promptly removed. In the event the same is not removed, or the violation is not otherwise terminated with fifteen (15) days after of such violation is delivered to the owner of the lot upon which such violation exists, then the Association shall have the right, through its agents and employees (but only after a resolution of the board of directors or the architectural control committee) to enter upon such lot and to take such steps as may be necessary to remove or otherwise terminate such violation and the cost thereof (including legal and court costs incurred by the Association to enforce the provisions hereof) may be assessed against the lot upon which such violation occurred, and when so assessed, a statement for the amount thereof shall be rendered to the owner of said lot at which time the assessment shall become due and payable and a continuing lien upon such lot, and a binding personal obligation of the owner of such lot, in all respects (and subject to the same limitations) as provided in Article Five, paragraph 8 of this Declaration. The Association shall have the further right, through its agents, employees, or committees, to enter upon and inspect any lot at any reasonable time for the purpose of ascertaining whether any violation of the provisions of this article, or any of the other provisions or requirements of this Declaration, exist on such lot; and neither the Association nor any such agent or employee shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

f. Unless at least seventy-five percent (75%) of the Class C members have given their prior written approval, the Association shall not by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls, common fences and driveways, or the upkeep in lawns and plantings within Quivira Falls.

ARTICLE EIGHT

Party Walls and Easements for Encroachments

1. Townhouse units may have at least one wall in common with an adjoining townhouse unit, which common wall or walls will be built on a dividing line between lots. Each such common wall shall be a party wall and the rights and obligations of the owners of such party walls shall be as follows:

a. General Rules To the extent not inconsistent with this article, all laws applicable to party walls and liability for property damage due to negligence or willful acts or omissions in the State of Kansas shall apply thereto. No owner of any townhouse unit shall cut through or make penetration through a party wall for any purpose whatsoever.

b. Party Fence. Each fence which is build and placed on the dividing lines between lots and townhouse units shall constitute a party fence, and the general rules of law regarding party walls or fences and liability for property damage due to negligence or willful acts or omissions shall apply to such party fences. No owner of any townhouse unit shall cut through or make penetration through a party fence for any purpose whatsoever.

c. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of the party wall or party fence shall be shared by the owners who make use of the wall or fence, except such repair and maintenance required to be made by the Association as set forth hereinbefore.

d. Destruction by Fire or Other Casualty If a party wall or fence is damaged or destroyed by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, said wall or fence shall be repaired or replaced by the owners thereof and the cost of such repairs or replacement shall be borne equally without prejudice, however, to the right of any such owner to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.

e. Weatherproofing. Notwithstanding any other provisions of this article, to the extend that such damage is not covered and paid for by the insurance provided for herein, an owner, who by his negligent or willful act causes or permits any party wall or fence or portion thereof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

f. Right to Contributions. The right of any owner to contributions from any other owner under this article shall be appurtenant to the lot and townhouse unit and shall pass to such owner's successors in title.

g. 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 arbitrator shall choose one additional arbitrator and the decision shall be by a majority of all arbitrators. If any party refuses to appoint an arbitrator within (10) days after written request therefore, the board of directors of the Association shall have the authority to select an arbitrator for the refusing party.

ARTICLE NINE

Utility Easements, Easements for Minor Encroachments, Easements for Ingress and Egress to Lots, and General Easements for Benefit of the Association.

1. Utility Easements. The Declarant will install or cause to be installed lines, pipes, conduits, meters and other utility facilities referred to as “utility lines,” for the purpose of providing such sewer, electricity, gas, water, and telephone services to the individual townhouse units, and to the common areas. To insure that such utility lines, photo-cell lights, meters and other utility equipment shall be kept, maintained, restored, repaired and replaced. Declarant hereby grants to the Association, its successors and assigns, and to the Johnson County Sewer District, the City of Overland Park, and any and all public utilities, for the benefit of the owners, the following permanent rights, licenses and easements:

a. An easement to keep, maintain, restore, repair and replace any such utility lines, photo-cell lights, meters and other utility equipment over, and under and across any Association property or lot and townhouse unit for the purpose of maintaining, restoring, repairing or replacing any utility lines, and for the purpose of reading any meter installed with respect to any utility line.

b. If, in order to maintain, restore, repair or replace the utility line or other utility equipment that serves more than one townhouse unit, it becomes necessary to break through walls, excavate or otherwise damage a townhouse unit, or Association property entered, the damages caused by such entry shall be repaired and the townhouse unit or Association property entered shall be restored to substantially the same condition as prior to such damage, as a common expense of the Association. Expenses applicable to removal of obstructions in a sewer line from the basement floor

to the top floor of an attached townhouse unit shall be assumed and paid by the owner of such unit and shall not be a common expense.

c. If it becomes necessary to maintain restore, repair or replace utility lines which serve more than one townhouse unit, then the cost of such maintenance, restoration, repair or replacement to its former condition shall be common expense of the Association.

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

3. Blanket Easement. There is hereby created a blanket easement upon, across, over and under all of the real estate for ingress and egress, installment, operation, replacing, repairing and maintaining utilities, including but not limited to water, sewer, telephone, television, electricity, gas and drainage facilities, together with the right to remove any obstruction that may be placed in such easement area that would constitute interference with the use of such easement or with the use, maintenance, operation or installation of such utilities or drainage facilities. Notwithstanding anything to the contrary contained in this paragraph, or in this Declaration, no sewer, electrical line, water line or other utilities may be installed or relocated upon property owned by the Association or by owners until approved by Declarant so long as it owns any real estate and thereafter by the Association's board of directors. Neither Declarant nor any utility company or other authorized entity using the easements shall be liable for any damage done by them, their employees or agents, to shrubbery, trees, flowers or other improvements located on the land covered by said easements. The owners of the respective townhouse units shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property, which are utilized for or serve other units or the common areas, but each owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance and enjoyment of his townhouse unit. The owner of a

townhouse unit is prohibited from disconnecting any utility line, meter, photo-cell light device, or any other utility equipment, and all owners of townhouse units are prohibited from intentionally interrupting the utility services rendered to owners of other townhouse units or the common areas. All expenses incurred by the Association in reconnecting or repairing utility services as the result of the intentional disruption of such service by a townhouse unit owner shall be assessed against said owner. It shall be the obligation of the Association to maintain all sewer lines and facilities from the basement or exterior of townhouse units (other than detached single family townhouse units) to the County sewer line, such lines to be located within such easement areas. All expenses for such maintenance shall be common expense to be paid from fees and charges received by the Association pursuant to this Declaration.

4. Easement for Ingress and Egress. The Declarant hereby dedicates and creates to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, for the benefit of each owner, an easement for ingress and egress to each townhouse unit over and across all common areas and facilities.

5. Association Easement. The Declarant hereby establishes and reserves to itself, its successors and assigns, and hereby grants to the Association, its successors and assigns, an easement over, under and across all real estate subject to this Declaration, for the benefit of each owner, for the purposes of executing any of the powers, rights or duties granted to or imposed upon the Association by the terms of this Declaration, or the Articles of Incorporation and Bylaws of the Association.

ARTICLE TEN

USE RESTRICTIONS

1. Use of Land as Single Family Residence: Minimum Squire Footage. Each townhouse unit will be constructed upon an individual lot evidenced by a warranty deed to be recorded in the office of the Registrar of Deeds for Johnson County, Kansas. Each townhouse unit conveyed shall be designated by a separate legal description and shall constitute a fee simple estate subject to the terms conditions, and provisions hereof.

Each townhouse unit shall be used solely for a private residence, and no professional business or commercial use shall be made of the same or any portion thereof: nor shall an owner's or tenant's

use of the unit endanger the health or disturb the reasonable enjoyment of any other owner or resident.

Except for improvements owned by the Association, only townhouse units, which are single family residences which may be joined together by a common wall or walls and/or common roofs and/or foundations, shall be constructed upon the real estate subject to this Declaration. No townhouse unit shall be erected or placed upon the real estate unless the same shall contain a minimum of seven hundred fifty (750) square feet of total floor area exclusive of porches, unfinished basements, attics or garages. No appurtenant building or other structure will be permitted to be constructed on any lot without the prior consent of the architectural control committee as provided hereinabove.

2. Design and Location of Townhouse Units: Additional use Restrictions.

a. After the original construction by the Declarant, no townhouse units shall be erected, placed, altered or externally improved on any lot until the building plans and specifications, exterior color scheme, materials, grading and the location thereof have been approved in writing by the Association board of directors or the architectural control meeting, as set forth in this Declaration.

b. No structure of a temporary character, trailer, vehicle, basement, tent, shack, garage, barn or other outbuildings shall be used on any lot or within the subdivision at any time as a residence, either temporarily or permanently.

c. No clothes lines, signs, billboard, unsightly objects or nuisance shall be erected, placed or permitted. No awnings, canopies, shutters, or radio and television antennas or satellite dish shall be affixed to or placed upon an exterior wall, window, or roof of a townhouse unit without the prior written consent of the Association Board of Directors.

d. No storage of any type shall be allowed at any time on the owner's property except within the private enclosed townhouse unit or garage of the owner, and the same shall not be stored in such manner as to be exposed to public view. Storage within a garage shall not be so great as to cause an owner to not use his garage for the purpose of parking his car. No boat, camper,

trailer, truck, mobile home, or self-propelled recreational vehicle of any type whatsoever may be parked, stored, or otherwise located at any location within the area affected by these restrictions except for a period of time reasonably necessary for loading or unloading of personal property into the same by owner. Provided, however, that no person shall be allowed to use such vehicle for cooking or sleeping purposes at any time or for any reason whatsoever. All such vehicles shall be parked within the confines of the storage area designated by the Association for such purposes. A reasonable store fee may be charged by the Association for parking within the storage area.

e. No major repair, rebuilding or maintenance of any vehicle shall be permitted except within the private enclosed garage, if any, of the owner. No major repair, rebuilding or maintenance of any vehicle shall be permitted in open parking areas or carports. This includes, but is not limited to automobiles, trucks, campers, trailers and boats. No non-operable vehicle of any kind, nor any vehicle without current license tags may be kept on any unit, yard, driveway or street in front of any unit at any time.

f. The foregoing covenants of this Declaration shall not apply to the activities of the Association or the activities of the Declarant, its agents and employees. The Declarant may maintain while constructing and selling townhouse units in or upon such portions of the real estate as Declarant may determine, such facilities as in its sole discretion may be necessary or convenient including but without limitation, offices, storage areas, model units and signs.

g. No dog or other animal pen or run may be maintained at any time or place. No animals, livestock, or poultry of any kind shall be raised, bred or kept at any time or place, except dogs, cats or other common household pets, not be exceed a total of two (2) which may be kept, provided that they are not kept, bred or maintained for any commercial purposes. All such pets must be confined at all times within the interior of the unit, within the fenced area of a townhouse patio or on a leash under the direct supervision and control of the owner.

h. All rubbish, trash or garbage or unsightly debris shall be kept so as not to be seen from the neighboring units and streets.

i. All fixtures and equipment installed within a townhouse unit, commencing at a point where the utility lines, pipes, wires, conduit or systems enter the exterior walls of the townhouse unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act nor any work that will impair the structural soundness or integrity of another townhouse unit or

impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other townhouse units or their owners.

j. No vehicles shall be parked on streets or driveways except in designated parking areas nor parked so as to obstruct ingress and egress owners of townhouse units, their families, guests and invitees, except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible. Except for the reasonable needs of emergency, construction, delivery or pickup, or service vehicles, no vehicle exceeding three-quarter (3/4) ton size shall be permitted to park in Quivira Falls.

k. Except in the individual fences patio areas appurtenant to a townhouse unit, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except as installed in accordance with the initial construction of the building or as approved by the Association's board of directors or their designated architectural control committee. No chain link boundary fences shall be allowed upon any townhouse lot.

l. No noxious or offensive activity shall be carried on in any one townhouse unit or upon the common areas nor shall anything be done thereon which may be or may become an annoyance or nuisance to other owners and the neighborhood.

ARTICLE ELEVEN

General Provisions

1. **Amendment.** The covenants, conditions and restrictions of this Declaration shall run with and bind the real estate subject to this Declaration, and shall inure to the benefit of and be enforceable by Quivira Falls Community Association, or the owner of any townhouse unit, subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date that this Declaration is recorded. After which time said covenants shall be automatically extended for successive period of fifteen (15) years unless an instrument signed by a majority of the then owners of the townhouse units has been recorded, agreeing to

abolish said covenants, conditions and restrictions or to change said covenants, conditions and restrictions in whole or in part; provided, however, that no such agreements to change shall be effective unless made and recorded six (6) months in advance of the effective date of such change; provided, further, that no such agreement to change shall be applicable to existing buildings on the properties; and provided, further, that no such change shall be effective on less than thirty (30) days prior notice to owners.

2. **Amendment by Declarant.** Until such time as the first townhouse unit is conveyed by Declarant, Declarant at its sole discretion may abolish said covenants, conditions and restrictions or change them in whole or in part.

3. **Amendment by Owners.** Except as provided in paragraphs 1 and 2 of this Article, the covenants, conditions and restrictions of this Declaration may be abolished, amended, and/or changed in whole or in part only with the consent of two-thirds (2/3) of all Class A and Class B memberships, evidence by a document in writing bearing each of their signatures. Notwithstanding the foregoing, without the consent of at least seventy-five percent (75%) of the Class C memberships (based upon one vote for each mortgaged townhouse unit) the covenants, conditions and restrictions set forth in this document may not be amended to:

a. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner of his townhouse unit.

b. Abandon, partition, subdivide, encumber, sell or transfer real estate of improvements thereon which are owned directly or indirectly by the Association, provided, however, that the granting of easements for public utilities or other public purposes consistent with the intended use of such property be Quivira Falls shall not be deemed a transfer within the meaning of this clause.

No amendment or change shall be voted upon until at least thirty (30) days prior written notice has been given each owner and known mortgagee of a townhouse unit.

4. **Enforcement.** Enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant,

condition or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants; and failure by the Quivira Falls Community Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

5. Compliance by Mortgagees. Mortgagees of townhouse units may, jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any common area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for immediate reimbursement therefore from the Association.

6. 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 here fore apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

8. Notices. All notices required to be given here-under shall be deemed to have been delivered when deposited with the United States postal service, postage prepaid, addressed to the owner at the street address assigned to his townhouse unit by the governing body of the City of Overland Park, Kansas, at its delegate, or addressed to Declarant at Robert O. McCollum, 12800 W. 111th St, Overland Park, Kansas; provided, however, said notice may be delivered by any other means.

IN WITNESS WHEREOF, Kansas Land Development Company, being the Declarant herein, has caused this instrument to be executed in its name and on its behalf by its general partners duly authorized thereunto this 11th day of September, 1974.

KANSAS LAND DEVELOPMENT COMPANY

By _____

Robert O. McCollum, General Partner

By VENTURE SEVENTY-THREE, INC.
A General Partner

By _____

Richard M. Bliss, President

Page 40

STATE OF KANSAS)

COUNTY OF JOHNSON) ss.

Before me, the undersigned, on this day personally appeared Robert O. McCollum, a general partner of Kansas Land Development Company, and Richard M. Bliss, President of Venture Seventy-Three, Inc., which is a general partner of Kansas Land Development Company, who subscribed to the foregoing instrument and acknowledged to me that the same was the act of Kansas Land Development Company, a limited partnership, and that they executed the same as the act of such partnership for the purposes and consideration therein expressed, and in the capacity therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notaries seal the 11th day of September 1974.

Notary Public Mary F. Hadel

My commission expires:

SEPTEMBER 26, 1976

All other provisions of the original Quivira Falls Declaration of Covenants, Conditions, Restrictions and Dedication of Easements not specifically amended shall remain unchanged by these amendments.

IN WITNESS WHEREOF, the undersigned owners who represent at least sixty percent (60%) (the current percentage requirement, before these amendments) of the lot owners within Quivira Falls hereby subscribe their names and identify their properties as of the date first above written.

PROPERTY OWNER

LEGAL DESCRIPTION

Donna L. Clinton

04

Signature

Lot Number

10984 Rosehill

03

Street Address

Block Number (Quivira Falls Plat 1 Cert of Sur LTS1-21
Blk 3 Lt 4 Rec Bk 995 P 137

Overland Park, KS 66210

City

ACKNOWLEDGEMENT

STATE OF KANSAS

COUNTY OF JOHNSON

BE IT REMEMBERED that on this 4th day of May, 1990, personally appeared Donna Clinton, who is known to me to be the same person who executed the above and foregoing Declaration of Amendments to Quivira Falls Community Association Declaration of Covenants, Conditions, Restrictions and Dedication of Easement, dated April 1, 1990, and acknowledged the execution of the same.

IN WITNESS WHEREOF, I Have hereunto set my hand and affixed my official seal on the date and year above written.

Margaret McMillen

Notary Public

Margaret

McMillen

My commission expires: 3/13/93