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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS

THIS DECLARATION, made this 24th day of September, 1986, by OAKBROOKE ASSOCIATES, a limited partnership, of the City of Overland Park, Johnson County, Kansas, hereinafter jointly referred to as "DECLARANT."

WITNESSETH:

WHEREAS, DECLARANT is the owner of certain real property located within the City of Overland Park, Johnson County, Kansas, and described in Exhibit A attached hereto and incorporated herein by reference as though fully set forth; and

WHEREAS, DECLARANT desires to provide for the creation on such real property of a planned residential community with community facilities for the use and benefit of the residents of such community; and

WHEREAS, DECLARANT desires to provide for the preservation and enhancement of the property values, amenities and opportunities in such community and for the maintenance of such real property and improvements thereon and, to such end, desires to subject the real property described in Exhibit A, together with any additions hereinafter made thereto, to the covenants, restrictions, easements, changes and liens set out herein, each and all of which is and are for the benefit of such property in each and every owner thereof; and

WHEREAS, DECLARANT deems it desirable for the efficient preservation of the values and amenities in such community, to create an entity which should be delegated and assigned the powers of: owning, maintaining and administering the community properties and facilities; administering and enforcing the terms of this Declaration; collecting and disbursing the assessments and charges hereinafter created; and, further, promoting the health, safety and welfare of the community's residents; and

WHEREAS, DECLARANT has incorporated, under the laws of the State of Kansas, the Montrachet Home Owners Association as a non-profit corporation for purposes of exercising the functions set out herein;

NOW, THEREFORE, DECLARANT declares the real property described in Exhibit A, together with any additions hereinafter made thereto, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to herein as "covenants and restrictions" set out herein.

#### I. DEFINITIONS

A. "Declarant" is Oakbrooke Associates, a limited partnership, which is currently the owner of certain real property located within the City of Overland Park, Johnson County, Kansas, and described in Exhibit A attached hereto and incorporated herein by reference as though fully set forth.

B. "Owner" is defined to mean the record owner, whether one or more persons or entities, having a fee simple title to any Lot which is a part of the Property but excluding any person or entity having such interest merely as security for the performance of an obligation.

C. "Property" is defined to mean all of that real Property described in Exhibit A attached hereto and incorporated herein by reference as though fully set forth together with any additions hereinafter made thereto.

D. "Common Areas" shall be defined to mean all of that part of the Property described in Exhibit B attached hereto and incorporated herein by reference as though fully set forth.

E. "Lot" is defined to mean or refer to any plot of land shown upon any recorded subdivision plat of the Property with the exception of the Common Areas.

F. "Association" is defined to mean the Montrachet Home Owners Association, a Kansas corporation, its successors and assigns.

G. "Members" shall be as defined in Article XI of this Declaration.

H. "Dwelling Unit" shall be defined as a completed single family residential structure or a part thereof for which a certificate of occupancy has been issued.

## II. PROPERTY RIGHTS

### A. Owners' Easements of Enjoyment

Every Owner shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

1. The right of the Association to charge reasonable admission, maintenance, repair or other fees for the use of the Common Area by less than all of the Members and the right of the Association, pursuant to its Bylaws, to adopt rules and regulations governing the use of the Common Areas and facilities and governing the personal conduct of the Members and their guests thereupon, and to establish penalties for the infraction of any such rules and regulations;

2. The right of the Association to suspend the voting rights and the rights to use the Common Areas by any Owner for any period during which any assessment against the Owner's Lot remains unpaid and for a period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations;

3. The right of the Association to dedicate or transfer any or all of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members of the Association. No such dedication or transfer shall be effective unless approved by a

two-thirds vote of all members without necessity of obtaining separate approval by each class of membership.

B. Delegation of Use

Any Owner may delegate, in accordance with the Association's Bylaws, such Owner's right to the enjoyment and use of the Common Areas to the Members of the Owner's family or the Owner's tenants or contract purchasers who reside on the Owner's Lot.

III. EASEMENTS

A. Easements for Utilities

Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies on any part of the Common Areas described herein.

B. Easements for Encroachments

Each Lot and that part of the Property included in the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings constructed by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as such encroachments shall stand or remain, shall and does hereby exist. In the event that any structure containing two or more townhouses is partially or totally destroyed and then rebuilt, the Owners of the townhouses so affected agree that minor encroachments of parts of the adjacent townhouse units or Common Areas due to the construction shall be permitted and a valid easement for said encroachment in the maintenance thereof shall exist.

C. Other Easements

There is hereby created a blanket easement upon, across and over and under all of the properties for ingress, egress, installation, replacement, repair and maintenance of all utilities, including but not limited to water, sewer, gas, telephone, electricity and cable or other television reception system. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles and other equipment on the

Property and to affix and maintain electrical or telephonic wires and conduits, sewer and water lines or piping, on, above or below any residence Lot or land owned by any Owner. An easement is hereby granted to the Association, its officers, agents, employees, including any employees of any management company having a contract with the Association over all or a part of the Common Areas and to enter upon any residence to perform the duties of maintenance and repair to the residences or the Common Area, to maintain any utilities for which an easement has been granted; and to prevent damage to any other residence. An easement is hereby reserved to Declarant to enter the Common Areas during the period of construction and sale of any part of the Property or any additions to the Property and to maintain such facilities and perform such operations as in the sole opinion of Declarant may reasonably require, convenient or incidental to the construction and sale of residences including, without limitation, a business office, sales office, storage area, construction yards, signs and model units.

#### IV. PARTYWALLS

##### A. General Rules of Law to Apply

Each wall which is built as part of the original construction of the townhouses upon the Property, and placed on the dividing line between the Lots shall pass to the Owners of each with such Lot as a partywall and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding partywalls and liability for Property damage due to negligence or willful acts or omissions shall apply thereto.

##### B. Sharing of Repair and Maintenance; Restrictions

The cost of reasonable repair and maintenance of a partywall shall be shared by the Owners who make use of the wall in proportion to such use. No Owner shall cut through or make penetration through any partywall for any reason whatsoever. The responsibility for making repairs and maintaining a partywall shall be

shared by the Owners who make use of the wall in proportion to such use.

C. Destruction by Fire or Other Casualty

If a partywall is destroyed, damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

D. Weatherproofing

Notwithstanding any other provisions of this article, an Owner who by such Owner's negligence or willful act causes the partywall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

E. Right to Contribution Appurtenant  
to the Land

The right of any Owner to contribution of any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successor or assigns.

F. Arbitration

In the event of any dispute arising concerning the party-wall, or under the provisions of this article, each party shall choose one arbitrator and such arbitrators shall choose an additional arbitrator to resolve such disputes. Any decision made by a majority of the arbitrators shall be binding upon the parties

V. EXTERIOR MAINTENANCE

In addition to maintenance upon the Common Areas, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows:

Paint and repair exterior stucco, siding, gutters, downspouts, exterior building services; maintain and

repair roofs; maintain trees, shrubs and grass; maintain sprinkler systems; mow grass. Such exterior maintenance shall not include maintaining glass surfaces or doors, screens and screen doors, exterior door and window fixtures and maintenance of any concrete surfaces including walks, garage floors, patios, aprons and the concrete portions of any driveways. Further, such exterior maintenance shall not include replacing roofs unless, by vote of a majority of the members (without necessity of separate approval by each class of member) there is a resolution passed authorizing the Association to replace roofs. Roof replacement and exterior painting shall be done on all units in any one building at the same time, unless an emergency situation exists as determined by the Association Board of Directors.

In the event that the need for maintenance or repairs is caused through the willful or negligent acts of the Owner, the Owner's family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which the Owner's Lot is subjected. The obligation described in the preceding sentence does not include any maintenance or repairs caused by fire or other casualty to the premises owned individually by Members of the Association.

Should any Owner fail to maintain any improvement or planting which it is his or her obligation to maintain as provided herein, then the Association may, upon approval of the Board of Directors, enter into such area and perform such required maintenance. The cost of such maintenance shall be charged directly to such Owner or Owners who are responsible for same and may be billed directly or added to and made a part of the next assessment to such Owner(s).

VI. ARCHITECTURAL CONTROL AND  
ENVIRONMENTAL MAINTENANCE

No building, fence, wall, gate, plantings or other structural feature or air conditioning unit or compressor shall be commenced, erected or maintained upon the Property (except any original construction or development by the Declarant) nor shall any exterior addition to or change or alteration therein be made (except by Declarant) nor shall any Owner erect, place, install or attach any sign, light, statuary, object or thing on the exterior of any building, or Lot, except Owners shall be allowed to construct, erect, and maintain plantings, and garden statuary within any enclosed patio or courtyard area.

Any plantings or garden statuary installed by any Owner within an enclosed patio or courtyard area shall be the responsibility of that Owner, and shall be maintained by such Owner. Likewise, such plantings, if they die or become unsightly, shall be removed by the Owner, and the Board of Directors of the Association reserves the right to direct removal of any dead or unsightly plantings. Such removal shall be at the expense of the Owner who planted the same.

In order to protect the uniformity of the outside appearance of all Dwelling Units, all interior drapes, blinds, shades, and other window coverings must show as white or off-white on the exterior of the building.

The Board of Directors of the Association or its designee, may from time to time adopt and promulgate such rules, regulations and conditions regarding the responsibility for maintenance of any such planting or other improvements that are allowed under this Declaration. The Board of Directors may also establish guidelines and statements of policy relative to other matters concerning architectural control and environmental maintenance. No such rules, regulations, statements or policies shall be construed as a waiver of the provisions of this article or any other provision herein contained or any requirement of law.



## VII. COVENANTS FOR ASSESSMENTS

### A. Creation of Lien, Personal Obligation for Assessments, Declarant Not Obligated

Each Owner of any Dwelling Unit on the Property by acceptance of a deed therefor, whether or not such covenant and agreement shall be expressed in such deed, is deemed to covenant and agree to pay to the Association:

1. General Assessments or charges;
2. Special Assessments for capital improvements;
3. Tax Assessments for any Property taxes on the Common Areas;

such assessments to be established and collected as hereinafter provided. The annual General, Special and Tax assessments, together with interest, cost and reasonable attorneys' fees incurred in any effort to collect such assessments shall be a charge on the land and against the Lot and shall be a continuing lien upon such Lot against which each such assessment is made. Each such assessment, together with interest, costs and such reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of said Property at the time when the assessment becomes due.

Declarant shall be obligated to pay such amounts as are necessary to permit the Association to perform its obligations hereunder if such expenses exceed the amounts collected from owners of Dwelling Units set forth herein. In no event, however, shall Declarant be obligated for any payment which would exceed an assessment he would otherwise be obligated to pay under the terms of this Agreement if he were the owner of all unsold Dwelling Units.

### B. General Assessments

The Association shall annually levy a general assessment. General Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, the improvement, operation

and maintenance of the Common Areas, the performance of the duties and exercise of the powers of the Association as set forth in this Declaration, by the Association of its duties and exercise by it of its powers and the establishment of reasonable reserves for the maintenance, repair and replacement of roads, paths and other improvements upon the Common Area and such other reserves as the Board of Directors of the Association deems appropriate. General Assessment levied by the Association for a fiscal year shall be adequate to finance the operations and activities of the Association, to satisfactorily maintain the Common Areas and to establish and maintain adequate repair and replacement reserves.

Until January 1 of the calendar year immediately following the recordation of this Declaration, the maximum General Assessment shall be Eighty Dollars (\$80.00) per month per Dwelling Unit.

The General Assessment may be increased by a majority vote of the Board of Directors of the Association for any year over that charged during the previous year by no more than the greater of:

- (1) the product determined by multiplying any percentage increase during the preceding Fiscal Year in the Consumer Price Index for Urban Wage Earners and Clerical Workers (1967=100) for the Kansas City Metropolitan Area, as determined by the Bureau of Labor Statistics of the United States Department of Labor, or such (hereafter referred to as the "Cost of Living Index") by the amount of the previous year's General Assessment; or
- (2) five percent (5%).

Further, the General Assessment may be increased, by votes of at least sixty percent (60%) of the Members of each class of Members who are voting in accordance with the Bylaws of the

Association at a meeting called for the purpose, inter alia, of considering such an increase, for any year in excess of the maximum amount by which it can be increased with Board of Directors approval as foresaid.

C. Special Assessments for Capital Improvements

In addition to the General and Tax assessments authorized herein, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of all Members who are voting in accordance with the Bylaws of the Association at a meeting called for the purpose, inter alia, of considering such assessments, it being understood that separate consent of each class of Members is not required hereunder. The Association may also levy, in any assessment year, a Special Assessment for the purpose of repairing and replacing roofs of all Dwelling Units and other buildings on the Property, provided that any such assessment shall have the consent of two-thirds (2/3) of a vote of all Members who are voting in accordance with the Bylaws of the Association at a meeting called for the purpose, inter alia, of considering such assessments, it being understood that separate consent of each class of Members is not required hereunder.

D. Tax Assessments

The Association shall annually levy an assessment for the payment of Taxes owed by the Association on Common Areas or for any improvement which constitutes part of the Common Areas.

E. Notice

Written notice for any meeting called for the purpose of taking any action authorized under paragraphs B, C, or D above shall be sent to all Members not less than thirty (30) nor more

than sixty (60) days in advance of any such meeting. At the first such meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of all of the votes of each class of membership, shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. If at such meeting the required approval is not given, then the secretary of the Association shall open the ballot for thirty (30) days to enable those Members not present to vote. If at the end of the thirty (30) day period the required approval has not been given, then the proposal shall be deemed to have been defeated.

F. Rate of Assessment

The General, Special and Tax assessments must be fixed at a uniform rate for all Lots. Assessments may be collected on a monthly basis.

G. Date of Commencement

The General and Tax assessments provided herein shall commence as to each Lot on the first day of the month following the conveyance of that lot to an Owner by the declarant. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year. The Association's Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Directors, and, unless the Board otherwise provides, one-twelfth (1/12) of the General, Special and Tax assessments shall be due each month. Upon transfer of a title to a Lot, the new Owner shall deposit with the Association

a sum of money sufficient to pay such Owner's share of the next due real property taxes on the Common Area. 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.

#### H. Effect of Nonpayment

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum. The Association may bring an action at law or equity against the Owner personally obligated to pay the same, or foreclose the lien against the Property and shall be entitled to recover the assessment, together with interest, costs and reasonable attorneys' fees for any such action. Each such owner, by his or her acceptance of a deed to a Lot, hereby expressly vests in the Montrachet Home Owners Association, the right and power to bring all actions against such Owner personally for the collection of each assessment charged as a debt and to enforce the lien described herein by all methods available for the enforcement of such lien including foreclosures by action brought in the name of the Association and in a like manner as a mortgage lien on the real property and its Owner hereby expressly grants the Association the power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid at any foreclosure sale and to acquire, hold lease, mortgage and convey any interest acquired. No Owner may waive or otherwise escape liability for any assessment provided for herein by nonuse of the Common Area or abandonment of his Lot.

#### I. Subordination of the Lien to Mortgages

Any lien for the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage on

any Lot. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall release a Lot from such liability for any assessments thereafter becoming due or from the lien thereof.

#### VIII. INSURANCE

##### A. Insurance to be Obtained and Maintained by Association

The Board of Directors of the Association shall obtain and maintain to the extent reasonably available, at least the following:

1. Casualty insurance naming the Association as insured for the benefit of the owners 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 at least against the following:

- (a) Loss or damage by fire or other hazards covered by the standard extended coverage endorsement;

- (b) 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

2. Public liability insurance, in such amounts and in such terms 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.

3. Such other policies of insurance, as deemed necessary and appropriate by the Board of Directors, including blanket policies of insurance for townhouse units as authorized by applicable Kansas law and approved by the Board of Directors of the Association in its sole discretion.

The cost of obtaining and maintaining the above-described insurance shall be deemed an expense of administering and maintaining the Association and may be added to or made a part of any assessment hereunder.

B. Insurance to be Obtained and Maintained by Association and/or 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 a full replacement value (i.e., one hundred percent (100%) of replacement costs exclusive of the 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 Montrachet Home Owners Association, as insurance trustee, or its designated nominee, for the benefit of each owner and their mortgagees, as their interests may appear, or jointly, to the townhouse unit owner, Montrachet Home Owners Association 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 Montrachet Home Owners Association as insurance trustee, or its designated nominee for each owner and their mortgagee as their interests may appear. The Association, as insurance trustee, or its designated nominee, 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 nor to assert any right or claim to any portion of the insurance proceeds, unless it be the excess of insurance payments over the replacement costs of the damaged unit and other portions of the unit owner's property, and then only after the same is fully repaired and restored. In the event that there are proceeds remaining after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying such reconstruction or repair costs, or in the event it is determined pursuant hereto that the damage for which the insurance proceeds are paid shall not be reconstructed or repaired, such proceeds shall be distributed to the respective owners and their respective mortgagees as their interests may appear. If there are any such casualty loss proceeds which relate solely to the common areas remaining after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying such reconstruction or repair costs, then in such event, all of such proceeds shall be



paid over to, or retained by the Association. 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 and attorney-in-fact 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, and shall adjust all claims arising under all insurance policies, and the authority to, and shall execute and deliver releases upon the payment of claims. Title to any unit is declared, and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed or other instrument of conveyance from the Declarant or from any Owner or grantor shall constitute appointment of the attorney-in-fact as herein provided. The proceeds of insurance collected on account of any casualty by the Association as insurance trustee, or its designated nominee, except as otherwise provided for herein, shall be disbursed only in payment of the costs of replacement, reconstruction or repair of the damaged improvements, unless all townhouse unit owners and their respective first mortgagees agree in writing not to repair, reconstruct or rebuild. All damage to townhouse units and improvements located upon real estate owned by the Association shall be repaired, reconstructed, and rebuilt from the proceeds of insurance collected by the Insurance Trustee, or from collections of assessments against owners on account of such casualty not covered by insurance. Such reconstruction and repair is mandatory unless an amendment is made to this Declaration with the consent of ninety percent (90%) or more of all Class A and all Class B memberships and their respective first mortgagees. 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 to the Association as insurance trustee, or its designated nominee, to be added to the funds received from said insurance proceeds, and the same shall be disbursed for replacement, reconstruction or repair of the unit. Assessments for common expenses shall not be abated during the period of insurance adjustment and repair and restoration. The Board of Directors of the Association may employ an architectural control committee or other qualified person who shall be in charge of all replacement, reconstruction and repair of all improvements. Reconstruction of the building(s), as used in this paragraph, means restoring the building(s), substantially to the same condition in which it or they existed prior to the fire, casualty or other disaster, with each unit and the common area having the same vertical and other boundaries as previously existed. Each request for disbursement of insurance proceeds held by the Association as insurance trustee, or its designated nominee, shall include a certificate of the architectural committee or other qualified person employed by the Association to the effect that all work then completed has been performed in accordance with plans and specifications 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:

1. 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;

2. Exclusive authority to negotiate losses under each policy shall be vested in the Board of Directors of the Association, as agent, attorney-in-fact or trustee for the townhouse unit owner and his mortgagee;

3. In no event may the insurance coverage obtained and maintained pursuant to the requirements of this Declaration be brought into contribution with insurance purchased by the owners of individual townhouse units or their mortgagees, or trustees, and any "no other insurance" or similar clause in any policy obtained by the Association pursuant to the requirements of this Declaration shall exclude such policies from consideration;

4. All policies shall provide that such policies may not be cancelled 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;

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

6. 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.

Notwithstanding the foregoing provisions of this article, the requirements for maintenance of insurance on any property shall not apply to any property acquired by the Veterans Administration or the Federal Housing Administration pursuant to mortgage foreclosure during the period of ownership by either agency.

The owner of any lot and townhouse unit may obtain additional insurance at his expense, including liability insurance to cover accidents or damage to persons or property occurring within his 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. The Association, at the sole discretion of the Board of Directors, may purchase one or

more blanket policies of casualty insurance, naming the Association as insured for the benefit of every owner and mortgagee, if so available for such purpose. In such event, except for payment of premiums, renewal or sufficiency and content of insurance policies and collection of proceeds, the provisions of this Declaration relating to individual policies of casualty insurance and the rights, obligations, procedures and requirements heretofore set forth in connection therewith shall nevertheless apply, and such insurance premiums shall be common expenses to be paid and handled by the Association as set forth hereinbefore. 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, and provided further, provisions for such blanket insurance shall be without prejudice to the right of each townhouse unit owner to insure his own townhouse unit under a separate policy meeting the requirements hereof, and without being charged additionally any share of the common insurance premium expense. In the event there are in existence both blanket as well as individual or homeowners policies of casualty insurance, and if the damage for which the casualty loss proceeds are paid was limited solely to units insured therefor under said individual or homeowners policies, then in such event, all of the remaining proceeds after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying such reconstruction or repair costs, or in the event it is determined pursuant hereto that the damage for which the insurance proceeds are paid shall not be reconstructed or repaired, such proceeds shall be paid over to the unit owners thereof and their respective first mortgagees as their interests

may appear; however, if the damage for which the casualty loss proceeds are paid encompassed both the common areas and one or more units, then all of such remaining proceeds shall be paid over to the Association and jointly to the unit owners thereof and their respective first mortgagees as their interests may appear pursuant to such fair and reasonable formula governing the pro-ration thereof as the Board of Directors of the Association shall determine in its sole discretion, which determination shall be final and binding on all of the aforesaid parties; and if, under the aforesaid circumstances, any such casualty causes no damage to any of the unit owners' properties' solely individually insured, then in any such event, all or any such remaining proceeds shall be paid over to and/or retained by the Association. In the event that there are no homeowners or individual casualty insurance policies, but only blanket policies of casualty insurance in existence at the time of any damage, then in such event, all of the casualty loss proceeds remaining after defraying all reasonable costs and expenses related to the administration of the insurance trust and after defraying reconstruction or repair costs thereof shall be paid over, or retained by the Association. Annually, the Association may require evidence of insurance coverage, with all appropriate endorsements and provisions as specified herein from each owner, or shall furnish each townhouse unit owner a memorandum of insurance coverage approved by the Kansas Commissioner of insurance setting forth the essential coverages of any blanket policy.

#### IX. RESTRICTIONS

##### A. General Use

No commercial or business activity as defined in the Ordinances of the City of Overland Park shall be permitted upon the Property except those related to the operation of the Common Areas by the Association and those related to the sale or management of units in the project by the Declarant or the Association.

No commercial vehicle may be stored or parked on any portion of the Property except in an enclosed garage, except for those vehicles making deliveries and providing services to the Lots and living units in the development within the Property. Similarly, no boating vessel, trailer, camper or recreational vehicle may be parked or left on the Property except in an enclosed garage. No advertising signs, including "For Rent" and "For Sale" signs, shall be placed or permitted to remain on the Property, except that Owners shall be permitted to place "For Rent" and "For Sale" signs in the windows of their Dwelling Units. Except in any enclosed individual patio areas which are a part of a Lot, no planting or gardening shall be done. Any such patio area shall be kept trimmed so as not to encroach upon neighboring Property. No fences, hedges or walls shall be erected or maintained upon said Property except those erected at the time of the original construction of the buildings located thereon. Without the prior written approval of the Board of Directors of the Association, no exterior television or radio antennae or satellite dish shall be placed or maintained upon any portion of the Property.

B. Declarant's Use

These covenants shall not apply to the business activities of Declarant during construction by the Declarant upon any portion of the Property.

C. Right to Lease

Declarant shall retain the right to enter into leases with any third parties for the use or occupancy of any Lots or town-houses owned by Declarant.

D. Construction or Alteration of Improvements

Declarant reserves the right to (i) make such changes and/or substitutions of materials in construction which are deemed necessary and in the best interests of the development or which may be required by a lending institution; (ii) determine the exterior color and size, including layout and location of

buildings on various plots to fit into the general pattern of development; (iii) determine the grading and elevation of all plots; (iv) determine the elevation of foundation and streets to conform to topographical conditions.

#### E. Restriction on Structures

No structures of a temporary nature, and no trailer, tent, shack, barn, pen, kennel, run, stable, outdoor clothes dryer, playhouse, swimming pool, shed or other building shall be erected used or maintained on any lot at any time unless the Board of Directors of the Association has granted in writing its approval prior to construction or installation of same.

#### F. Obstructions

There shall be no obstructions of any portion of the Common Areas or of any storage in the Common Areas without the prior written consent of Declarant or the Board of Directors of the Association. No clothes, laundry or other article shall be hung or exposed in any portion of the Common Areas or on or about the exteriors of any of the buildings on the Property. All balcony areas shall be kept clear of any obstructions or debris.

#### G. Animals

No animals, livestock or poultry of any kind shall be raised or kept on any building site in the Project other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area but shall not be leashed to any fence. No such pet will be kept, bred or maintained for commercial purposes. All requisite governmental ordinances governing pets shall be adhered to by all Owners keeping pets in accordance with this provision.

#### H. Nuisance

No noxious or offensive trade or activity shall be carried on, upon or within any lot or improvement thereon nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the neighborhood or other members.

Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any improvement on the Property.

I. Repair and Storage of Vehicles,  
Trailers, Etc.

No automotive repair or rebuilding or any other form of automotive manufacture, whether for hire or otherwise, shall occur anywhere on the Property except that automotive repairs on a non-commercial basis and not for hire may be conducted in any enclosed garage permitted under other provisions of these Restrictions. The restrictions contained under this paragraph are in addition to and not in lieu of restrictions imposed elsewhere in this Declaration.

J. Required Size of Residence Units

All ranch style buildings erected on a lot on the Property shall contain a minimum of one thousand (1,000) square feet of enclosed floor area in each unit. All one and one-half (1 1/2) story or two (2) story buildings erected on a lot on the Property shall contain a minimum of one thousand one hundred (1,100) square feet of enclosed floor area in each unit. The words "enclosed floor area" as used herein shall mean in all cases the liveable area within the unit exclusive of garage floorings, stairwells and basement but inclusive of all utilities. The Declarant reserves the absolute and non-contestable right to determine whether the enclosed floor area of any unit meets the minimum requirements provided for hereunder and such determination shall be final. The Declarant also reserves the right to reduce any of the enclosed floor area requirements set forth above.

K. Sodded Yards

The entire front, rear and side yards of every lot and the unpaved portions of street easements contiguous thereto shall be



sodded with grass deemed most appropriate at the earliest feasible time when construction in contiguous areas will not damage or interfere with the growth of such grass. Other ground covers may be approved by the Association or the Declarant.

L. Restrictions Not Applicable to Association

The covenants and restrictions herein contained shall not apply to the activities of Montrachet Home Owners Association, a not-for-profit corporation incorporated or to be incorporated under the laws of the State of Kansas, or to Declarant. Declarant may maintain, while constructing and selling improvements on the Lots, in or upon such portions of the Property as Declarant determines, such facilities as in its sole discretion may be necessary or convenient, including, but without limitation, offices, storage areas, model units and signs.

X. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

A. The Common Areas

The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

B. Personal Property and Real Property  
For Common Use

The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests conveyed to it by the Declarant.

C. Rules and Regulations

The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of

the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the Owner's Lot and suspension of the right to vote and the right to use the Common Areas. In addition, the Board shall have the power to seek relief in any Court for violations or to abate unreasonable disturbances. Imposition of sanctions shall be as provided in the Bylaws.

#### D. Implied Rights

The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

#### E. Maintenance

The Association shall maintain and keep in good repair the Common Areas, if any, such maintenance to be funded, as hereinafter provided, the cost of such maintenance to be considered part of the expenses of the Association to be funded by assessments as herein provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Area; trash removal; provision of water to all Owners; snow removal from all Common Areas, driveways and sidewalks.

The Association shall have the right to select one trash disposal company to serve the entire project and such disposal company shall be the only disposal company allowed to provide service to the Dwelling Units in the project.

#### F. General

The Association may enter into a contract with a third party or parties for the performance of some or all of the duties. It is acknowledged and agreed that the Declarant may assume

responsibilities for discharging the obligations of the Association until such time as there are sufficient members in the Association so as to permit Declarant to delegate all of a certain part of such duties to the Board of Directors of the Association. The Declarant likewise reserves the right to enter into a contract with a third party or third parties for the performance of some or all of the duties hereunder and any such contracts between Declarant and third parties which by their terms are binding upon successors in interest to the Declarant shall be binding upon the Association if such contracts are so assigned. Further, Declarant does not warrant any work performed by Declarant in discharging the obligations of Declarant or the Association hereunder and no Member shall have any action against Declarant with respect thereto. Likewise, no Member shall have any action against Declarant for any delays in providing maintenance or repair in discharging the obligation of Declarant or the Association hereunder.

#### XI. MEMBERSHIP AND VOTING RIGHTS

##### A. Membership

Every person or entity who is an owner of a fee simple interest in one or more units (lot and townhouse) shall be a member of the Association. Ownership of such unit shall be the sole qualification of Class A membership.

##### B. Membership Classes

The Association shall have two classes of voting memberships:

1. Class A. Class A members shall be all owners of units except the Declarant. Class A members shall be entitled to one vote for each unit in which they hold the interest required for membership by Article XI, paragraph A. When more than one person holds such interest in any 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 case with respect to any one unit.

2. Class B. Every Class B membership shall be issued to the Declarant. Five 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 five 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.

(a) When all of the townhouse units of the original project (76, more or less) have been constructed and sold upon the real estate described on Exhibit "A" attached to this Declaration, and provided that no such additional real estate may be made subject to this Declaration or any supplemental Declaration prepared and filed for record pursuant to the provisions of Article II hereof; or

(b) December 31, 1990.

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.

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

## XII. GENERAL PROVISIONS

### A. Enforcement

The Association, or any Owner, shall have the right to enforce, by an action 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 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.

### B. Severability

The invalidation of any of these covenants or restrictions by judgment or court order shall in no way effect any other provision which shall remain in full force and effect.

### C. Binding Nature

The covenants and restrictions of this Declaration shall run with and bind the land, for twenty (20) years from the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. Except as otherwise set forth hereinafter, this Declaration may be amended during the first five (5) years by affirmative vote of seventy-five percent (75%) of all available votes as set forth in Section X I.B. herein. Thereafter, this Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of each class of Members. The Amendment hereto must be recorded. However, each "Dwelling Unit" owner hereby

agrees that it will benefit all "Dwelling Unit" owners as potential mortgage borrowers and potential sellers of their respective "Dwelling Units", if the property is approved as a qualifying subdivision under the respective policies, rules and regulations, as adopted from time to time, by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), the Federal Home Loan Mortgage Corporation ("FHLMC"), the Department of Housing and Urban Development ("HUD"), the Federal Housing Association ("FHA"), the Veterans Administration ("VA"), or any other governmental agency or any other public, quasi-public or private entity which performs (or in the future may perform) functions similar to those currently performed by such entities. Declarant reserves the right and power to make, execute, acknowledge and record a special amendment (the "Special Amendment") to this Declaration or to the Bylaws at any time and from time to time (i) to comply with the requirements of the FNMA, GNMA, FHLMC, HUD, FHA, VA or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities and/or (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering the "units". In furtherance of the foregoing, an Owner coupled with an interest is hereby reserved and granted to Declarant to make or consent to a Special Amendment on behalf of each "Dwelling Unit" owner. Each deed, mortgage, or deed of trust, other evidence of obligation or other instrument affecting a "Dwelling Unit" and the acceptance thereof shall be deemed to be a grant and acknowledgement of and a consent to the reservation of the power of Declarant to make, execute, acknowledge and record Special Amendments. No Special Amendment made by Declarant shall affect or impair the lien of any first mortgage upon a "Dwelling Unit" or any warranties made by a "Dwelling Unit" owner in order to

induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage on the Owner's "Dwelling Unit".

D. Annexation

Additional residential property and Common Areas may be annexed to the properties upon the affirmative vote of a majority of all of the Members without necessity of separate vote by each class of Members.

E. To Observe All Laws

Said Association shall at all times observe all state, county, city and other laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations, and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject, however, to the limitations of its rights to contract as are herein provided for.

F. Covenants Running with the Land

All of the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding upon OAKBROOKE ASSOCIATES and upon its successors and assigns.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein have hereunto set their hands and seals this 24th day of September, 1986.

OAKBROOKE ASSOCIATES, Declarant

By:

William H. Prelogar, Jr.  
WILLIAM H. PRELOGAR, JR.,  
Managing General Partner

By: Mary Clark Prelogar  
MARY CLARK PRELOGAR,  
Managing General Partner

By: Larry I. Roehr  
LARRY I. ROEHR,  
Managing General Partner

By: Sue N. Roehr  
SUE N. ROEHR,  
Managing General Partner

By: I. H. Clark, M.D.  
I. H. CLARK, M.D.,  
Managing General Partner

By: Dorothy Vera Clark  
DOROTHY VERA CLARK,  
Managing General Partner

STATE OF Kansas )  
COUNTY OF Johnson ) SS.

I HEREBY CERTIFY that before me, a Notary Public in and for said County and State, on this 24th day of September, 1986, personally appeared William H. Prelogar, Jr., to me know to be the identical person who executed the within and foregoing instrument, and upon being duly sworn, he acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth and upon his oath he affirmed and certified that the matters set forth in the within and foregoing instrument were true and correct as set forth.

SWORN TO AND SUBSCRIBED before me by the said William H. Prelogar to certify which witness my hand and seal of office.

Kimberly Kay Cook  
Notary Public

My Term Expires:

7-10-87



STATE OF Kansas )  
COUNTY OF Johnson ) SS.

I HEREBY CERTIFY that before me, a Notary Public in and for said County and State, on this 24<sup>th</sup> day of September, 1986, personally appeared Mary Clark Prelogar, to me know to be the identical person who executed the within and foregoing instrument, and upon being duly sworn, she acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth and upon her oath she affirmed and certified that the matters set forth in the within and foregoing instrument were true and correct as set forth.

SWORN TO AND SUBSCRIBED before me by the said Mary Clark Prelogar to certify which witness my hand and seal of office.

Ethel R. Widner  
Notary Public

My Term Expires:

May 11, 1988

STATE OF Kansas )  
COUNTY OF Johnson ) SS.

I HEREBY CERTIFY that before me, a Notary Public in and for said County and State, on this 24<sup>th</sup> day of September, 1986, personally appeared Larry I. Roehr, to me know to be the identical person who executed the within and foregoing instrument, and upon being duly sworn, he acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth and upon his oath he affirmed and certified that the matters set forth in the within and foregoing instrument were true and correct as set forth.

SWORN TO AND SUBSCRIBED before me by the said Larry I. Roehr to certify which witness my hand and seal of office.

Ethel R. Widner  
Notary Public

My Term Expires:

May 11, 1988

STATE OF Kansas )  
COUNTY OF Johnson ) SS.

I HEREBY CERTIFY that before me, a Notary Public in and for said County and State, on this 24th day of September, 1986, personally appeared Sue N. Roehr, to me know to be the identical person who executed the within and foregoing instrument, and upon being duly sworn, she acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth and upon her oath she affirmed and certified that the matters set forth in the within and foregoing instrument were true and correct as set forth.

SWORN TO AND SUBSCRIBED before me by the said Sue N. Roehr to certify which witness my hand and seal of office.

Ethel R. Widner  
Notary Public

My Term Expires:

May 11, 1988

STATE OF Kansas )  
COUNTY OF Johnson ) SS.

I HEREBY CERTIFY that before me, a Notary Public in and for said County and State, on this 24th day of September, 1986, personally appeared I.H. Clark, M.D., to me know to be the identical person who executed the within and foregoing instrument, and upon being duly sworn, he acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth and upon his oath he affirmed and certified that the matters set forth in the within and foregoing instrument were true and correct as set forth.

SWORN TO AND SUBSCRIBED before me by the said I.H. Clark, M.D. to certify which witness my hand and seal of office.

Kimberly Kay Clark  
Notary Public

My Term Expires:

7-20-87

STATE OF Kansas )  
COUNTY OF Johnson ) SS.

I HEREBY CERTIFY that before me, a Notary Public in and for said County and State, on this 24th day of September, 1986, personally appeared Dorothy Vera Clark, to me know to be the identical person who executed the within and foregoing instrument, and upon being duly sworn, she acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth and upon her oath she affirmed and certified that the matters set forth in the within and foregoing instrument were true and correct as set forth.

SWORN TO AND SUBSCRIBED before me by the said Dorothy Vera Clark to certify which witness my hand and seal of office.

Kimberly-Kay Cook  
Notary Public

My Term Expires:

7-20-87

EXHIBIT "A"

A tract of land in the NW 1/4 of Section 11, Township 13S, Range. 24E in the City of Overland Park, Johnson County, Kansas being more particularly described as follows:

Beginning at a point 238.00 ft. East and 45 ft. South of the NW Corner of said Section 11; thence North 89°53'28" West a distance of 132.93 ft. to a point; thence on a curve to the left having a radius of 50.00 ft. a distance of 78.58 ft. to a point, said point being 95.00 ft. South and 55.00 ft. East of the NW corner of said Section 11; thence South 00°04'00" West a distance of 1100.00 ft. to a point; thence North 65°35'20" East a distance of 602.34 ft. to a point; thence North 38°26'00" West a distance of 290.00 ft. to a point; thence North 00°04'00" East a distance of 475.00 ft. to a point; thence North 42°53'28" West a distance of 271.00 ft. to the point of beginning.

41-<sup>50</sup> STATE OF KANSAS  
COUNTY OF JOHNSON } ss  
FILED FOR RECORD

1986 SEP 29 P 4: 03 0

RUBIE M. SCOTT  
REGISTER OF DEEDS

BY \_\_\_\_\_ DEP