STATE OF KANSAS
COUNTY OF JOHNSON } SS
FILED FOR RECORD

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CONDOMINIUM PROPERTY DECLARATION

THE TUILERIES

21.00 REGISTER OF DEEDS
BY________DEP.

THIS DECLARATION, made as of this 17th day of July, 1978, by DEL PASEO INVESTORS, a California partnership composed of Robert W. Howard, William A. Howard, Stephen N. Barnard and Howard, Howard & Barnard, Inc., as partners, hereinafter referred to as "Owner", pursuant to the provisions of the Apartment Ownership Act of the State of Kansas, Sections 58-3101 et seq. of the Kansas Statutes Annotated (hereinafter sometimes referred to as the "Act"), for the purpose and intent of submitting the hereinafter described real property and the improvements located or to be located thereon to the provisions of the Act,

WITNESSETH:

WHEREAS, Owner is the owner of the real property and improvements located thereon and the easements appurtenant thereto, all hereinafter referred to as the "Property", or the "property", the real property being described on Exhibit A attached hereto, and

WHEREAS, Owner desires by recording this Declaration together with the exhibits hereto, which are incorporated herein by reference, to submit said Property to and under the provisions of the Act, said Property, as hereby established as a Condominium, to be known as "THE TUILERIES."

NOW, THEREFORE, Owner does hereby and upon the recording of this Declaration, duly executed and acknowledged, submit the Property in the manner and form shown on the Plat attached hereto as Exhibit B to the provisions of the Act and declares that the Property shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved and in any other manner utilized, upon and subject to the provisions of the Act and to the covenants, conditions, restrictions, uses, limitations and obligations set forth in this Declaration and the exhibits hereto, all of which shall run with all or any portion of the Property and shall be binding upon and inure to the benefit of Owner, its grantees, successors and assigns, and any persons, associations, corporations or other legal entities acquiring or owning any interest in the Property, their grantees, successors, heirs, executors, administrators and assigns. In furtherance of the establishment and submission of such Property to the provisions of the Act, is hereby provided as follows:

1. Definitions. As used in this Declaration and in the Bylaws attached hereto as Exhibit D, unless the context otherwise requires, the following terms shall have the following meanings:

(a) "Association" - "The Tuileries Association" and "Bylaws" - the Bylaws of the Association, attached hereto as Exhibit D;

(b) "Common areas and facilities" (sometimesreferred to on the Plat as "common elements") - all portions of the Property, except the condominium units;

(c) "Owner" - DEL PASEO INVESTORS, a California partnership;

(d) "Declaration" - this instrument submitting the Property to the provisions of Sections 58-3101, et seq., Kansas Statutes Annotated, said statutes referred to hereinafter as "KSA", and the Declaration as from time to time amended;

(e) "Limited common areas and facilities" - common areas and facilities reserved for use of specified units to the exclusions of others, consisting of: (i) all patios (designated on the Plat by the Letter "P" and a corresponding number); (ii) all balconies (designated on the Plat by the letter "B" and a corresponding number); (iii) carports as designated on the Plat and including the roof, walls, supports, pavement and air space located therein; (iv) basement storage space as designated on the Plat.

(f) "Parcel" - the lot or lots, tract or tracts of land, including additional tracts added by subsequent amendment described in the Declaration or amendments thereto, submitted to the provisions of KSA Sections 58-3101, et seq.;

(g) "Persons" - a natural individual(s), corporation, partnership, trustee or other legal entity capable of holding title to real property;

(h) "Plat" - the plats of survey of the parcel attached hereto as Exhibit B;

(i) "Property" - all the land, property or properties and space comprising the parcel or parcels, all improvements and structures erected, constructed or contained therein or thereon, including the buildings and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the condominium unit owners, submitted to the provisions of KSA Sections 58-3101, et seq.;

(j) "Record" - to record in the office of the Register of Deeds of Johnson County, Kansas, in Olathe, Kansas;

(k) "Condominium unit" or "unit" - a part of the property including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use, and having lawful access to a public way, each unit and the legal designation thereof, as shown on the plat, and shall consist of the following portions of the building in which it is located: (i) the interior surface of each bearing wall; (ii) the interior surface of the ceiling; (iii) the upper surface of the concrete sub-floor (in townhouses with private basements, the concrete sub-floor of such basement); (iv) the interior surface (including all glass or glass substitute) of the windows and doors set in bearing walls; (v) the air space enclosed with the area described anddelimited in (i) through (iv) above; (vi) any and all walls, ceilings, floors, partitions and dividers wholly within such air space (but excluding any pipes, ducts, wires, cables, conduits, bearing beams or supports contained within such walls, ceilings, floors, partitions and dividers or within such air space); (vii) all plumbing, heating, ventilating, air-conditioning, lighting, cooking and other fixtures and equipment (exclusive of pipes ducts, wires, cables or conduits) located wholly or partly within such air space; (viii) garage space as set forth in the Plat with numbers corresponding to the units of which such space is a part;

(l) "Condominium unit interest" - the percentage of ownership interest in the common areas and facilities allocated to each unit as designated on Exhibit C attached hereto; any specified percentage of the condominium unit owners means such percentage in the aggregate in condominium unit interest of the undivided ownership of the common areas and facilities;

(m) "Condominium unit owner" - the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a condominium unit.

2. Condominium Unit Description and Percentage; Statement of Purpose. The legal description of each condominium unit is designated by condominium unit number or symbol of the condominium unit as shown on Exhibit C attached hereto and following the condominium unit designation on Exhibit C is the percentage of ownership interest ("condominium unit interest") in the common areas and facilities allocated to each such unit. The percentages have been computed by taking as a basis the value of each condominium unit in relation to the value of the property as a whole and such percentages shall remain constant unless hereafter changed by agreement of all condominium unit owners. In determining the value of each condominium unit, for the purpose of determining percentage of ownership interest, Owner has determined to use and has used substantially the factor of useable square footage in each respective condominium unit as square footage relates to the total useable square footage in all condominium units, and has not considered the interior finish and improvements, these latter matters being personal and subjective in nature and subject to change from time to time by the unit owners and suc-

ceeding unit owners. Also not considered in such factor is the square footage of the private basements in certain townhouse units, the square footage in such units being computed without reference to the same. Such factor is expressed as a percentage the sum of which is 100%. All condominium units are intended and restricted to use in the manner set forth in Article V, Section 11, of the Bylaws (Exhibit D).

3. Ownership of Condominium Units. Upon recording of this Declaration and the plat the property shall become subject to the provisions of KSA Sections 58-3101, et seq., and all units shall thereupon be capable of ownership in fee simple or any lesser estate and may thereafter be conveyed, leased, mortgaged or otherwise dealt with in the same manner as other real property, but subject, however, to the provisions, conditions and limitations imposed by KSA Sections 58-3101, et seq., this Declaration and the Bylaws and Rules and Regulations of the Association. Each condominium unit owner shall be entitled to the percentage of ownership in the common areas and facilities appertaining to such condominium unit as computed and set forth on Exhibit C, and ownership of such unit and of the owner's corresponding percentage of ownership in the common areas and facilities shall not be separated, nor shall any unit, by deed, plat, court decree or otherwise, be subdivided or in any other manner separated into tracts or parcels smaller than the whole unit as shown on the plat. In the event that two or more units are now or hereafter owned by one owner, such owner shall be entitled to the percentage of ownership in the common areas and facilities appertaining to each unit.

Subject to the provisions of the Bylaws and the Rules and Regulations applicable to the property, the common areas and facilities such as walks, drives, parking structure, building entrances, foyers, stairways, halls, corridors and the like, may be used by each condominium unit owner, occupants of the respective units, their employees, invitees and guests, for the purposes for which such common areas and facilities are designed and intended, and without limiting the foregoing, for the express purpose of providing ingress to and egress from the respective units.

4. Instrument Affecting Condominium Unit Affects Ownership of Common Areas and Facilities. Every deed, lease, mortgage or other instrument may legally describe a unit by its identifying number or symbol as shown on the plat and as set forth in the Declaration, and every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the owner's corresponding percentage of ownership in the common areas and facilities even though the same is not expressly mentioned or described therein.

5. Common Areas and Facilities to Remain Undivided--Exceptions. As long as the property is subject to the provisions of the Act the common areas and facilities shall remain undivided, and no condominium unit owner shall bring any action for partition or division of the common areas and facilities. Any covenant or agreement to the contrary shall be null and void. Nothing contained herein, however, shall prevent partition of a unit as between co-owners thereof, if such right of partition shall otherwise be available, but such partition shall not be in kind.

6. Common Areas and Facilities Costs to be Paid by Condominium Unit Owners--Unpaid Amount to Constitute Lien--Foreclosure.

(A) Every condominium unit owner shall pay his proportionate share of the common expenses, consisting of expenses of administration, maintenance and repair of the common areas and facilities (including limited common areas and facilities) and of any other expense lawfully agreed upon. Such proportionate share shall be in the same ratio as his percentage of ownership in the common areas and facilities as set forth on Exhibit C. Payment thereof shall be in the amounts and at the times as determined by the condominium unit owners or the board of managers, as hereinafter provided,

(B) If any condominium unit owner fails or refuses to make any payment of the common expenses when due, the amount thereof shall, upon recording of notice thereof, constitute a lien on the interest of such condominium unit owner in the unit and condominium unit interest of such owner. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any unit shall constitute a lien on such unit prior to all other liens, excepting only (i) tax liens on the unit in favor of any political subdivision, municipal corporation, or special benefit district, and (ii) all sums unpaid on a first mortgage of record. Such lien may be foreclosed by suit by the manager or board of managers, acting on behalf of the condominium unit owners, in like manner as a mortgage of real property. In any such foreclosure, the condominium unit owner shall be required to pay a reasonable rental for the condominium unit, if so provided in the Bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The manager or board of managers, acting on behalf of the condominium unit owners, shall have power to bid in the unit at the foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintained without foreclosing or waiving the lien securing the same.

(C) Where the mortgagee of a first mortgage of record or other purchaser of a unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his or her successors and assigns, shall not be liable for the share of the common expenses or assessment by the Association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners including such acquirer, his or her successors and assigns.

(D) In the event any person acquires or is entitled to the issuance of a sheriff's or other official deed in foreclosure of the lien for common expenses above provided, the deed conveying the interest of any unit owner and the interest so acquired shall be subject to the terms, provisions, covenants, conditions, and limitations contained in the Declaration, the Plat, the Bylaws, the Rules and

Regulations, or any deed affecting such interest then in force.

(E) In a voluntary conveyance, the grantee of any unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his or her share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or board of managers, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

7. <u>Liens, Against What--Consent, How Given</u>.

(A) In the event any lien exists against two or more units and the indebtedness secured by such lien is due and payable, the unit owner of any unit so affected may remove the unit and the undivided interest in the common areas and facilities appertaining thereto from the lien by payment of the proportional amount of the indebtedness which is attributable to such unit. In the event the lien exists against the property, the amount of such proportional payment shall be computed on the basis of the percentages set forth in the Declaration. Upon payment as herein provided, the lienor shall execute and deliver to the condominium unit owner a release of such unit and the undivided interest in the common elements appertaining thereto from the lien. Any such proportional payment and release shall not prevent the lienor from proceeding to enforce his rights against any unit or interest with respect to which the lien has not been so paid or released.

(B) No labor performed or materials furnished with the consent of or at the request of a condominium unit owner or his agent or his contractor or subcontractor shall be the basis for the filing of a lien against the interest of any other condominium unit owner in the common areas and facilities or units, or against any part thereof, unless such other owner has expressly consented to or requested the same. Labor performed or materials furnished for the common areas and facilities, if duly authorized by the board of managers, shall be deemed to be performed with the express consent of each condominium unit owner and shall be the basis for the filing of a lien against the Property, and shall be subject to the provisions of subsection (A) hereinabove.

8. Limited Common Areas and Facilities. The condominium unit owner of any unit to which a limited common area pertains shall have an exclusive easement for the use of the same, subject to the rules and regulations of the Association. With respect to carports and basement storage space, the board of managers shall assign parking space or spaces and basement storage space to each condominium unit owner in the carport or basement designated for use by that unit as indicated in the Plat. The board of managers shall be flexible in determining which parking spaces and storage spaces are to be used by which owners, but the decision of the board shall be binding upon all such owners.

9. Taxes, Assessed and Levied Against Units. Real property taxes, special assessments, and any other special taxes or charges of the State of Kansas or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed against and levied upon real property shall be assessed against and levied upon each unit and the owner's corresponding percentage of ownership in the common areas and facilities as a tract, and not upon the Property as a whole. Until such taxes, assessments, or charges are levied and assessed against each unit, as above described, the same shall be paid by the Association as a common expense.

10. Interest Acquired due to Nonpayment of Taxes, Subject to What. In the event any person acquires any interest in any condominium unit acquired as a result of the nonpayment of any taxes, the interest so acquired shall be subject to all the provisions of KSA, Sections 58-3101, et seq., and to the terms, provisions, covenants, conditions, and

limitations contained in the Declaration, the Plat, the Bylaws, the Rules and Regulations, or any deed affecting such interest then in force.

11. Insurance, How Obtained--Named Insured--Who Adjusts--Loss Payable Clause, Form of--Premiums, How Paid. The manager or the board of managers shall obtain insurance for the property against loss or damage by fire and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the common areas and facilities and the units. The insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the manager or the board of managers, as trustee for each of the condominium unit owners in the percentages established in the Declaration. The policy of insurance may contain a loss payable clause containing the words, "To the holder or holders of mortgages or deeds of trust of record, if any, as their interests may appear" without specifically naming the holder or holders in the clause, in which event the proceeds shall thereupon be payable jointly to the manager or the board of managers and the holder or holders of mortgages or deeds of trust of record, as trustees for each of the condominium unit owners in the percentages established in the Declaration, i.e., on Exhibit C hereto. The trustees shall have full power to adjust all insurance losses by suit or otherwise and payment accepted by the trustees hereunder shall constitute a discharge to the insurer. Premiums for the insurance shall be common expenses of the Association.

12. Insurance Proceeds Used for Reconstruction--Reconstruction Defined. In case of fire or any other disaster, the insurance proceeds, if sufficient to reconstruct the buildings, shall be applied to such reconstruction. "Reconstruction of the buildings", as used in this and the following paragraph 13, means restoring the buildings to substantially the same condition in which they existed prior to the fire or other disaster, with each unit and the common areas

and facilities having the same vertical and horizontal boundaries as before.

13. Insurance Proceeds Insufficient to Reconstruct, Effect. In case of fire or other disaster, if the insurance proceeds are insufficient to reconstruct the buildings and the condominium unit owners and all other parties in interest do not voluntarily make provision for reconstruction of the buildings within one hundred twenty (120) days from the date of damage or destruction, the board of managers may record a notice setting forth such facts and upon the recording of such notice:

(a) the property shall be deemed to be owned in common by the condominium unit owners;

(b) the undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(c) any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the condominium unit owner in the property as provided herein; and

(d) the property shall be subject to an action for partition at the suit of any condominium unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the condominium unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the condominium unit owners, to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each condominium unit owner.

14. Sale of Property, Authorized, How--Dissenting Owner Entitled to Interest, Defined. The Property (excepting from the term "Property" as here used the individual units, fixtures, and equipment which must be replaced or disposed of due to wear and tear or obsolescence and personal property such as, but not limited to, furnishings, office equipment, tools and maintenance equipment, the maintenance, disposition or acquisition of which shall be determined by the board of managers) shall not be sold, in whole or in part, unless the sale is approved by at least eighty percent (80%) in aggregate unit interest of all the condominium unit owners at a meeting of condominium unit owners duly

called for that purpose. Such action shall be binding upon all condominium unit owners, and it shall thereupon become the duty of every such owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect the sale. Any condominium unit owner who did not vote in favor of such action and who has filed written objection thereto with the manager or board of managers within twenty (20) days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, provided such condominium unit owner pays the Association the amount of any unpaid assessments or charges due and owing from such owner. The value of such interest shall be that percentage of the total value of the property determined by fair appraisal, which represents the ownership percentage of the common areas and facilities (condominium unit interest) allocated to the unit owned by such objecting owner.

15. Property Removed from Condominium Law, How, Effects. All, but not less than all, of the condominium unit owners may remove the property from the provisions of K.S.A. Sections 58-3101, et seq., by an instrument to that effect, duly recorded, if the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the condominium unit owner. Upon such removal, the property shall be deemed to be owned in common by all the owners. The undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities

16. Bylaws, Amendments. The administration of the Property shall be governed by Bylaws, a true copy of which is appended hereto as Exhibit D and recorded with this Declaration. No modification or amendment of this Declaration or the Bylaws shall be valid unless the same is set forth in an amendment thereof and such amendment is duly recorded.

17. Managers May Act for Owners--Actions--Service of Process. Whenever in this Declaration or the Bylaws, the board of managers or the members thereof are authorized or directed to acquire, hold, lease, mortgage, or convey any part of or interest in the Property, or to acquire any lien thereon, or to acquire or receive the proceeds of any policy of insurance or other moneys, goods, or chattels, with respect to the Property, such actions shall be carried out in the names of the members of the board of managers and their successors in office from time to time, as trustees, on behalf of some or all of the condominium unit owners, as the case may be. Without limiting the rights of any condominium unit owner, actions may be brought in the names of the members of the board of managers on behalf of two or more of the condominium unit owners, as their respective interest may appear, with respect to any cause of action relating to the common areas and facilities or more than one unit. Service of process on two or more condominium unit owners in any action relating to the common areas and facilities or more than one unit may be made on any member of the board of managers in the manner provided by statute at the following address:

10801 Glenwood
Overland Park, Kansas.

18. Condemnation Proceedings, Board of Managers to Represent All Condominium Unit Owners. Whenever the state, a political subdivision, or any other corporation, agency, or authority having the power of eminent domain shall seek to acquire any of the common areas and facilities, such authority may conduct negotiations with the board of managers as representatives of all condominium unit owners, and the said board of managers may execute and deliver the appropriate conveyance on behalf of all owners in return for the agreed consideration. Said board of managers shall allocate such consideration, whether received through negotiation or condemnation, to the repair, replacement, or restoration of common areas and facilities, and then to the unit owners in proportion to their respective condominium unit interests.

In the event negotiations shall fail, the condemning authority may join the board of managers as party defendants in lieu of naming all condominium unit owners having an interest in the common areas and facilities, and such proceedings shall bind all condominium unit owners; however, any such owner having an interest in the common areas and facilities may be made a party defendant in such proceedings. Subject to the foregoing provisions in this Section 17, in any condemnation proceeding, the condominium unit owners, respectively, and their respective mortgagees, if any, shall be entitled to seek and have their just damages for the taking of their units and their condominium unit interests in the common areas and facilities, as allowed by law, including severance damage, if any.

19. Managers to Keep Records, Open to Owners. The manager or board of managers, as the case may be, shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the condominium unit owners at convenient hours of week days.

20. Rule Against Perpetuities--Restraints on Alienation. It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this Declaration.

21. Easements and Utilities. Permanent easements are hereby reserved to, through, in, and over all portions of the buildings, including all condominium units, as may be reasonably necessary for the installation, maintenance, and repair of utility services and common areas and facilities, which easements shall run to and be administered by the board of managers for the benefit of the condominium unit owners. Public utilities furnishing services for common use, such as

water, electricity, gas, sewerage, and telephone, to the property shall have access to the common areas and facilities and the units as may be necessary for the installation, repair, or maintenance of such services, and any costs incurred in opening or repairing any wall or structural portion to install, repair, or maintain such services shall be an expense of the administration of the Property, to be assessed in accordance with the Bylaws. In the event that hereafter two or more units are purchased by one owner for the combined use thereof as a single family residence, the board of managers of the Association shall have the right, but shall not be obligated, to grant easements so as to permit connection of such units by way of stairways, entrances, removal of walls, floors, or ceilings, and/or other facilities through the common areas and facilities. All costs and expenses incurred thereby shall be borne by the owner of such units and the contract, the contractor, and the manner in which such work is carried out shall be subject to the approval of said board of managers. All such easements shall continue until such time as the units so connected are converted to separate and single family use, at which time the expense of restoring the common areas and facilities to constitute separate units shall be borne by the owner of the units restoring the same to separate units. The board of managers shall have the right to grant other easements and rights in, upon, and through the common areas and facilities to permit television and radio aerials and connections, cable television installations, and other facilities for the use and enjoyment of the condominium unit owners or any of them.

22. Maintenance of Units. It shall be the obligation of the condominium unit owner to maintain in good condition and repair the interior of each unit (including any garage space or basement which is a part of such unit) as indicated on the Plat, and all of the equipment, such as, but not limited to, interior plumbing fixtures, interior electrical equipment, interior gas and water equip-

ment (excepting the heat radiators, registers, flues, heat and air conditioning ducts, interior electrical lines, gas lines, water lines and sewer lines which shall be repaired and maintained by the Association as common expense), all windows, screens and storm windows, if any, doors, kitchen and bathroom equipment and the like. For the purposes herein, the term "interior" shall mean all parts of the unit within, but including the plaster, fresco, and drywall parts of, the exterior walls of the unit and the walls separating the units from the halls, corridors, stairways and other units, and, with respect to the floors and ceilings of each unit, the term "interior" shall mean all parts of the unit within the floors and ceilings, but including the plaster, fresco, and drywall finish of the ceiling and the wood, brick, or tile (including carpeting) of the floor surfaces. It is understood that the structural portions of the ceilings, floors, exterior walls, supporting columns, and walls separating the unit from halls, corridors, stairways, elevators and from other units shall be deemed common areas and facilities and maintained by the Association of condominium unit owners as common expense. All limited common areas and facilities shall likewise be maintained by such Association as common expense. All utility lines, such as water, electrical, plumbing pipes, sewer lines, gas lines, heating and air conditioning pipes and ducts in and to the interior of the units, and heat radiators, registers, flues, and heat and air conditioning ducts, or utility lines serving other units, within the units, shall be maintained by the Association as a common expense.

23. <u>Encroachments</u>. If any portion of the common areas and facilities now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common areas and facilities, as a result of the construction or present condition of the buildings, or if any such encroachment shall occur hereafter as a result of settlement or shifting of the buildings, an easement for the encroachment and for the maintenance of the same so long as such building stands or until the condition is corrected, shall exist. In the event

of deviations between the units as shown on the plat of survey and the units as built, the units as built shall control and constitute the legally described unit. Specifically, some units do not have ninety (90) degree angles between the ceiling and one wall, by virtue of the slanting roof of the building of which such units are a part. Other units have cathedral ceilings. These units, as built, shall control their legal description. Except as provided in the Act, no unit owner shall by deed, plat, or otherwise, subdivide or in any other manner cause his unit to be separated into tracts or parcels different from the whole unit as shown on Exhibit B.

24. Power of Attorney to Board of Managers. Each condominium unit owner, by accepting title to a unit, thereby grants to the persons who shall from time to time constitute the board of managers, but subject to the terms and provisions of the Bylaws attached hereto, an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any unit whose owner desires to surrender, sell, or lease the same, or which may be the subject of a foreclosure or other judicial sale, in the name of the board of managers or its designee, corporate or otherwise, on behalf of all condominium unit owners, and to convey, sell, lease, sublease, mortgage, or otherwise deal with any such unit so acquired or leased.

25. Units Subject to Declaration, Bylaws, and Rules and Regulations. All present and future owners, tenants, and occupants of units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time. The acceptance of a deed or conveyance or the entering into of a lease or the entering into occupancy of any unit shall constitute an agreement that the provisions of this Declaration, the Bylaws, and the Rules and Regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person

having at any time any interest or estate in such unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof. A condominium unit owner shall automatically be a member of the Association, as referred to in the Bylaws attached hereto, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

26. Amendment of Declaration. This Declaration may be amended or modified only by the affirmative vote of at least eighty percent (80%) in aggregate condominium unit interest of all condominium unit owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, except no amendment or modification shall be valid if contrary to or in conflict with the provisions of K.S.A. Sections 58-3101, et seq., as amended from time to time hereafter, or other applicable laws or ordinances. No such amendment shall be effective until recorded in the office of the Register of Deeds of Johnson County, Kansas, in Olathe, Kansas.

27. Invalidity. The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remaining provisions of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

28. Waiver. No provision contained in this Declaration shall be deemed to have been nullified or waived by reason of any failure to enforce the same or similar provisions previously.

29. Captions. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, modify, or supplement the Declaration or the intent of any provision thereof.

IN WITNESS WHEREOF, Del Paseo Investors, a California partnership, has caused this Declaration to be executed by its duly authorized partners the day and year first above written.

DEL PASEO INVESTORS

Robert W. Howard

William A. Howard

Stephen N. Barnard

HOWARD, HOWARD & BARNARD, INC.

By Stephen N. Barnard, President

ATTEST:

Larry O. Somers

STATE OF California)
)ss.
COUNTY OF Orange)

On this 17th day of July, 1978, before me, the undersigned Notary Public, personally appeared ROBERT W. HOWARD, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed and as a partner in Del Paseo Investors, a California partnership.

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

OFFICIAL SEAL
Susan Perelli - Minetti
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ORANGE COUNTY
My Commission Expires Sept. 9, 1980

Susan Perelli-Minetti

Notary Public in and for
said County and State

My commission expires:

September 9, 1980

STATE OF California)
)ss.
COUNTY OF Orange)

On this 17th day of July, 1978, before me, the undersigned Notary Public, personally appeared WILLIAM A. HOWARD, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed and as a partner in DEL PASEO INVESTORS, a California partnership.

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

OFFICIAL SEAL
Susan Perelli - Minetti
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ORANGE COUNTY
My Commission Expires Sept. 9, 1980

Susan Perelli-Minetti
Notary Public in and for
said County and State

My commission expires:

September 9, 1980

STATE OF California)
) ss.
COUNTY OF Orange)

On this 17th day of July, 1978, before me, the undersigned Notary Public, personally appeared STEPHEN N. BARNARD, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed and as a partner in DEL PASEO INVESTORS, a California partnership.

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

OFFICIAL SEAL
Susan Perelli - Minetti
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ORANGE COUNTY
My Commission Expires Sept. 9, 1980

Susan Perelli-Minetti
Notary Public in and for
said County and State

My commission expires:

September 9, 1980

STATE OF California)
) ss.
COUNTY OF Orange)

On this 17th day of July, 1978, before me, appeared Stephen N. Barnard, to me personally known, who being by me duly sworn, did say that he is the President of Howard, Howard & Barnard, Inc., a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said Stephen N. Barnard acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notary seal at my office in Newport Beach, California, the day and year last above written.

OFFICIAL SEAL
Susan Perelli - Minetti
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ORANGE COUNTY
My Commission Expires Sept. 9, 1980

Susan Perelli-Minetti
Notary Public in and for
said County and State

My commission expires:

September 9, 1980

EXHIBIT A

TRACT 1 Commencing at the Northwest corner, East One-Half (E 1/2), Southwest One-Quarter (SW 1/4), Section 8-13S-25E; thence South 02°-01'-43" East on the West Line, East One-Half (E 1/2), Southwest One-Quarter (SW 1/4), Section 8-13S-25E, 30.00 feet to a point on the existing Southerly Right-of-Way Line of 107th Street, said point being the True Point of Beginning; thence North 87°-48'-46" East on the existing Southerly Right-of-Way Line of 107th Street on a line which lies 30.00 feet Southerly from and parallel to the North Line, Southwest One-Quarter (SW 1/4), Section 8-13S-25E, 589.00 feet to a point; thence South 02°-11'-14" East, 614.00 feet to a point; thence South 30°-20'-06" East, 483.56 feet to a point; thence South 33°-31'-45" East, 262.04 feet to a point on the existing Northerly Right-of-Way Line of Interstate Highway 435 (I-435); thence Southwesterly, Westerly and Northwesterly on the existing Northerly Right-of-Way Line of Interstate Highway 435 (I-435) on a curve to the right having a radius of 5579.65 feet, an initial tangent bearing of South 89°-32'-36" West, 964.35 feet to a point on the West Line, East One-Half (E 1/2), Southwest One-Quarter (SW 1/4), Section 8-13S-25E; thence North 02°-01'-43" West on the West Line, East One-Half (E 1/2), Southwest One-Quarter (SW 1/4), Section 8-13S-25E, 1152.10 feet to the True Point of Beginning.

The above described tract containing 18.8591 Acres (821,500.575 square feet), and being subject to all easements and reservations of record.

TRACT 2 Commencing at the Northwest corner East One-Half (E 1/2) Southwest One-Quarter (SW 1/4) Section 8-13S-25E; thence South 02°-01'-43" East on the West line, East One-Half (E 1/2) Southwest One-Quarter (SW 1/4), Section 8-13S-25E, 30.00 feet to a point on the existing Southerly Right-of-Way Line of 107th Street; thence North 87°-48'-46" East on the existing Southerly Right-of-Way Line of 107th Street on a line which lies 30.00 feet Southerly from and parallel to the North line Southwest One-Quarter (SW 1/4), Section 8-13S-25E, 589.00 feet to the True Point of Beginning; thence North 87°-48'-46" East on the existing Southerly Right-of-Way Line of 107th Street, 48.33 feet to a point; thence South 12°-50'-46" West, 186.33 feet to a point; thence North 02°-11'-14" West, 179.95 feet to the True Point of Beginning.

The above described tract containing 0.0998 acres (4348.492 square feet) and being subject to all easements and reservations of record.

EXHIBIT C

PERCENTAGE OF OWNERSHIP INTEREST IN THE COMMON AREAS AND FACILITIES

	% of Ownership
Bldg. A	
Unit 101A	.582
102A	.873
103A	.739
104A	.739
105A	.872
106A	.673
Bldg. B	
Unit 101B	.428
102B	.465
103B	.764
201B	.647
202B	.620
203B	.768
204B	.458
301B	.632
302B	.597
303B	.744
304B	.438
Bldg. C	
Unit 101C	.477
102C	.438
103C	.440
104C	.454
105C	.628
201C	.638
202C	.640
203C	.643
204C	.609
205C	.616
206C	.454
301C	.597
302C	.635
303C	.639
304C	.593
305C	.595
306C	.434
Bldg. D	
Unit 101D	.760
102D	.465
103D	.437
104D	.438
105D	.471
201D	.457
202D	.771
203D	.620
204D	.638
205D	.638
206D	.630
301D	.430
302D	.729
303D	.600
304D	.634
305D	.634
306D	.601
Bldg. E	
Unit 101E	.641
102E	.459
103E	.442
104E	.441
105E	.475
106E	.425
107E	.475
201E	.460
202E	.627
203E	.614
204E	.651

EXHIBIT C

PERCENTAGE OF OWNERSHIP INTEREST IN THE COMMON AREAS AND FACILITIES

	% of Ownership
Bldg. E (cont.)	
Unit 205E	.650
206E	.634
207E	.631
208E	.637
301E	.447
302E	.612
303E	.594
304E	.644
305E	.644
306E	.612
307E	.621
308E	.607
Bldg. F	
Unit 101F	.588
102F	.864
103F	.739
104F	.671
Bldg. G	
Unit 101G	.670
102G	.731
103G	.848
104G	.581
Bldg. H	
Unit 101H	.587
102H	.865
103H	.738
104H	.738
105H	.863
106H	.669
Bldg. I	
Unit 101I	.484
102I	.441
103I	.442
104I	.461
105I	.648
201I	.643
202I	.645
203I	.639
204I	.615
205I	.632
206I	.461
301I	.613
302I	.642
303I	.637
304I	.595
305I	.611
306I	.447
Bldg. J	
Unit 101J	.589
102J	.859
103J	.734
104J	.671
Bldg. K	
Unit 101K	.429
102K	.463
103K	.756
201K	.649
202K	.618
203K	.776
204K	.457
301K	.634
302K	.601
303K	.740
304K	.436

EXHIBIT C

PERCENTAGE OF OWNERSHIP INTEREST IN THE COMMON AREAS AND FACILITIES

	% of Ownership
Bldg. L	
Unit 101L	.589
102L	.841
103L	.740
104L	.669
Bldg. M	
Unit 101M	.668
102M	.733
103M	.855
104M	.587
Bldg. N	
Unit 101N	.669
102N	.738
103N	.860
104N	.588
Bldg. O	
Unit 101O	.434
102O	.471
103O	.644
201O	.652
202O	.625
203O	.630
204O	.457
301O	.628
302O	.604
303O	.621
304O	.443
Bldg. P	
Unit 101P	.666
102P	.724
103P	.855
104P	.592
Bldg. Q	
Unit 101Q	.635
102Q	.466
103Q	.438
104Q	.442
105Q	.476
201Q	.626
202Q	.621
203Q	.640
204Q	.641
205Q	.640
206Q	.454
301Q	.449
302Q	.609
303Q	.605
304Q	.637
305Q	.638
306Q	.615