



Riley County Scanning Label



Debra J. Register  
Register of Deeds  
Riley County, Kansas  
Book: 845 Page: 5343  
Receipt #: 159034 Total Fees: \$16.00  
Pages Recorded: 3  
Date Recorded: 05/11/2011 2:43:04 PM

**SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS FOR WESTPORT COMMONS DEVELOPMENT**

This Second Amendment to Declaration of Restrictions for Westport Commons Development, is made this 10 day of May, 2011, by Westport Commons Development, LLC (hereinafter referred to as the "Developer").

WHEREAS, Developer has previously filed a Declaration of Restrictions for Westport Commons Development which development includes Lots 2, 3, and 4, Final Plat, Westport Commons, a Commercial Planned Unit Development, in the City of Manhattan, Riley County, Kansas, (the "Declaration") which Declaration was recorded in Book 839, at Page 4745 in the Office of the Register of Deeds, Riley County, Kansas; and

WHEREAS, Developer has previously filed its First Amendment to Declaration of Restrictions for Westport Commons Development to add additional land covered by the Declaration, being Lots 5, 6, 7, 8, 9, and 10 of Westport Commons, Unit 2, a Commercial Planned Unit Development, in the City of Manhattan, Riley County, Kansas, (the "First Amended Declaration") which First Amended Declaration was recorded in Book 841, at Page 2775 in the Office of the Register of Deeds, Riley County, Kansas; and

WHEREAS, Section XXIV of the Declaration gives the Developer the right to annex and add additional land to this development, in which case the additional land shall be subject to the covenants, conditions, and restrictions as set forth in the Declaration referred to above; and

WHEREAS, Developer now desires to add additional land to the property covered by the Declaration;

NOW THEREFORE, Developer hereby annexes and adds the following described real estate:

Lot 11 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas,

to the existing land covered by the Declaration and First Amended Declaration referred to above.

Pursuant to Section XXIV of the Declaration Developer hereby incorporates the covenants, conditions, and restrictions in the Declaration referred to above and recorded in Book 839 at Page 4745 in the Office of the Register of Deeds of Riley County Kansas into this Second Amendment to Declaration of Restrictions and makes such covenants, conditions, and restrictions applicable to Lot 11 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas.

Lot 11 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas, shall henceforth be subjected to the covenants, conditions, and restrictions set forth in the Declaration and recorded in Book 839, at page 4745 in the Office of the Register of Deeds of Riley County, Kansas.

As a result of this Second Amendment to Declaration of Restrictions of Westport Commons Development, the real estate now subject to the Declaration and First Amended Declaration referred to above is as follows:

Lots 2, 3, and 4, Final Plat, Westport Commons, a Commercial Planned Unit Development, in the City of Manhattan, Riley County, Kansas;

and

Lots 5, 6, 7, 8, 9, 10, and 11 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas.

IN WITNESS WHEREOF, the undersigned Developer has caused this instrument to be executed this 10 day of May, 2011.

**WESTPORT COMMONS DEVELOPMENT, LLC**

By:   
Angela R. Schultz, Authorized Officer

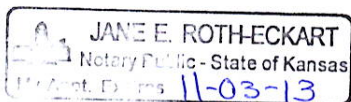
**DEVELOPER**

**ACKNOWLEDGMENT**

State of KANSAS, County of RILEY; ss

BE IT REMEMBERED that on this 10<sup>th</sup> day of May, 2011, before me, a Notary Public in and for said county and state, came Angela R. Schultz, authorized officer of Westport Commons Development, L.L.C., a Kansas limited liability company, duly organized and existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be the same person who executed, as such member, the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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



Jane E. Roth-Eckart  
Notary Public

My appt. expires:



Riley County Scanning Label 841-2775



Debra J. Register  
Register of Deeds  
Riley County, Kansas  
Book: 841 Page: 2775  
Receipt #: 150325 Total Fees: \$ 12.00  
Pages Recorded: 2  
Date Recorded: 05/05/2010 12:24:05 PM

**FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS FOR WESTPORT COMMONS DEVELOPMENT**

This First Amendment to Declaration of Restrictions for Westport Commons Development, is made this 13 day of April, 2010 by Westport Commons Development, LLC (hereinafter referred to as the "Developer").

WHEREAS, Developer has previously filed a Declaration of Restrictions for Westport Commons Development which development includes Lots 2, 3, and 4, Final Plat, Westport Commons, a Commercial Planned Unit Development, in the City of Manhattan, Riley County, Kansas, (the "Declaration") which Declaration was recorded in Book 839, at Page 4745 in the Office of the Register of Deeds, Riley County, Kansas; and

WHEREAS, Section XXIV of the Declaration gives the Developer the right to annex and add additional land to this development, in which case the additional land shall be subject to the covenants, conditions, and restrictions as set forth in the Declaration referred to above; and

WHEREAS, Developer now desires to add additional land to the property covered by the Declaration;

NOW THEREFORE, Developer hereby annexes and adds the following described real estate:

Lots 5, 6, 7, 8, 9 and 10 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas,

to the existing land covered by the Declaration referred to above.

Pursuant to Section XXIV of the Declaration Developer hereby incorporates the covenants, conditions, and restrictions in the Declaration referred to above and recorded in Book 839 at Page 4745 in the Office of the Register of Deeds of Riley County Kansas into this First Amendment to Declaration of Restrictions and makes such covenants, conditions, and restrictions applicable to Lots 5, 6, 7, 8, 9 and 10 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas.

Lots 5, 6, 7, 8, 9 and 10 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas, shall henceforth be subjected to the covenants, conditions, and restrictions set forth in the Declaration and recorded in Book 839, at page 4745 in the Office of the Register of Deeds of Riley County, Kansas.

As a result of this First Amendment to Declaration of Restrictions of Westport Commons Development, the real estate now subject to the Declaration referred to above is as follows:

Lots 2, 3, and 4, Final Plat, Westport Commons, a Commercial Planned Unit Development, in the City of Manhattan, Riley County, Kansas;

and

Lots 5, 6, 7, 8, 9, and 10 of Westport Commons, Unit 2, a Commercial Planned Unit Development in the City of Manhattan, Riley County, Kansas.

IN WITNESS WHEREOF, the undersigned Developer has caused this instrument to be executed this 13 day of April, 2010.

**WESTPORT COMMONS DEVELOPMENT, LLC**

By: Angela R. Schultz  
Angela R. Schultz, Authorized Officer

**DEVELOPER**

**ACKNOWLEDGMENT**

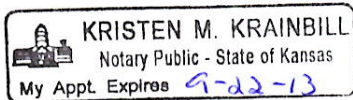
State of KANSAS, County of RILEY; ss

BE IT REMEMBERED that on this 13 day of April 2010, before me, a Notary Public in and for said county and state, came Angela R. Schultz, authorized officer of Westport Commons Development, L.L.C., a Kansas limited liability company, duly organized and existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be the same person who executed, as such member, the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

Kristen M. Krainbill  
Notary Public

My appt. expires:





Debra J. Register  
Register of Deeds  
Riley County, Kansas  
**Book: 839 Page: 4745**  
Receipt #: 109142 Total Fees: \$84.00  
Pages Recorded: 20  
Date Recorded: 10/23/2009 12:39:26 PM

## **DECLARATION OF RESTRICTIONS FOR WESTPORT COMMONS DEVELOPMENT**

**WHEREAS**, Westport Commons Development, LLC (hereinafter referred to as the “Developer”) is the owner of certain real estate in Manhattan, Riley County, Kansas, described as follows:

Lots 2, 3, and 4, Final Plat, Westport Commons, a Commercial Planned Unit Development, in the City of Manhattan, Riley County, Kansas,

and subsequent phases, if any; and

**WHEREAS**, the Developer is the owner of the real estate described above, and desires to place certain restrictions as set forth below upon those lots and tracts therein which are specifically hereinabove described, all of which restrictions shall be for the use and benefit of the Developer as the present owner thereof and for its future grantees and assigns.

**NOW, THEREFORE**, the Developer, for and in consideration of the benefits for itself, its successors and assigns, and its future grantees, hereby agrees that the above described real estate shall be, and it is hereby, restricted as to its use in the manner hereinafter set forth.

### **DEFINITION OF TERMS USED:**

1. The term “assessment lien” as used herein shall mean the lien on the individual properties above described for annual assessments and special assessments.
2. The word “Association” as used herein shall mean the Westport Commons Office Owners Association, a non-stock Kansas corporation established to provide care, maintenance, and control of the common area of the development, to assess Regular and Special Assessments, and to perform other obligations as set forth in this Declaration.
3. The word “building” as used herein shall mean any structure as further described under Section I, paragraph 1, of this document.
4. The term “common area property” as used herein shall mean the property described as Lot 4, Final Plat, Westport Commons Commercial Planned Unit Development, in the City of Manhattan, Riley County Kansas.
5. The term “Common Expense” as used herein shall be defined as those expenses attributable to the common area property as determined by the Association, insurance premiums, and other obligations of the Association set forth in this Declaration.

6. The word "Declaration" as used herein shall have reference to this Declaration. In the event that additional lots and tracts are in the future made subject to these Restrictions hereinafter provided, the word "Declaration" shall refer to and mean the same aforesaid documents with the same effect as though the instrument subjecting such additional lots and tracts to these Restrictions had been originally concurrently recorded at the time of recording of the above-described Declaration.

7. The word "Developer" as used herein shall mean Westport Commons Development, LLC, a Kansas Limited Liability Company, and the successors and assigns thereof.

8. The word "Development" as used here in shall mean the real estate above described and all buildings and improvements thereon.

9. The word "lot" as used herein may mean either any numbered lot, or any conveyance of land which may consist of one or more boundaries of the recorded plat herein above and herein below described, and upon which a building may be constructed in accordance with the restrictions herein set forth, or as set forth in individual deeds from the Developer, or from its successors or assigns and may also mean a condominium unit if portions of the development are established as condominium units.

10. The word "owner" shall mean the person or persons or corporation or Association whose estates or interests aggregate fee simple ownership of real estate in the real estate subject to this Declaration.

11. The word "person" means an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and their respective heirs, representatives, successors, and assigns.

12. The word "plat" as used herein shall mean the recorded plats which encompass and identify lots and tracts subjected to the restrictions herein set forth as hereafter provided.

13. The term "Proportionate Share" shall be defined as that share, or portions of the total common expense allocated and attributable to each lot owner under the provisions set forth in this Declaration.

14. The word "Restrictions" as used herein shall mean the restrictions set forth in this Declaration.

15. The word "sign" shall mean any structure or device upon or within which any poster, printing, lettering, or advertising of any kind whatsoever is used, placed, posted or affixed, and shall include any structure which constitutes a "sign" under zoning regulations of the City of Manhattan, Kansas.

16. The term “regular assessment” shall mean those assessments levied by the Association pursuant to Section III below.

17. The term “special assessment” shall mean those assessments in addition to the regular assessments levied by the Association pursuant to Section III below.

18. The word “tract” as used herein shall mean any area identified as such in part or entirely within the boundaries of the plat or identified as a common area.

**PERSONS BOUND BY THESE RESTRICTIONS:**

All persons, corporations, and entities who may own or shall hereafter acquire any interest in any of the above-described real estate hereby restricted shall be taken to hold and agree and covenant with the Owners of all other of such real estate, and with the successors, assigns and grantees thereof, to conform to and observe the following covenants, restrictions, and stipulations contained herein for a period of twenty (20) years from the date upon which these Restrictions are recorded; provided, however, that these Restrictions may be renewed and extended in the manner hereinafter provided.

**SECTION I**

**Use of Land: Assessments**

1. No lot may be improved, used or occupied for any other purpose other than: business and professional offices as defined in the Manhattan Zoning Regulations. The Development subject to this Declaration shall be consistent with a “Garden office” complex with a considerable amount of open space, careful placement of buildings, screening, and setback of structures and uses. The architecture of the buildings shall conform to the approved Planned Unit Development or such other law or regulation as is subsequently adopted by the appropriate municipal zoning authority.

2. All common areas shall be maintained and preserved for the future benefit, enjoyment and use of the owners of each property now or hereafter subject to these Restrictions, in common with the Owners of all others so situated, the Association to own and care for the common area. The individual lots within the Development may be assessed for the cost of the maintenance and preservation of the common areas, signage, and storm drainage easements as more fully set forth in Section III below. All tracts identified as such shall be Common Areas as described within the Declaration, and shall be subject to the rights, restrictions and uses of any portions thereof designated on the plat, which rights, restrictions and uses are more particularly described under Section XXI, Section XXII and Section XXIII hereof. The Developer reserves



the right to hereafter convey or dedicate any other part or all of any such tract for utility, drainage, or other public easement purposes, or to hereafter change, alter or relocate any such easement as may be presently shown upon the plat within any such tract.

## SECTION II Office Owners' Association; Membership in Association

1. Office Owners Association. The Westport Commons Office Owners' Association (the "Association") has been, or will be, incorporated as a corporation not organized for profit under the laws of Kansas. The Association shall be responsible for the protection, improvement, alteration, maintenance, repair, replacement, administration, and operation of the tract, including taking such action as is necessary for the assessment of: expenses, payment of losses, disposition of casualty insurance proceeds (if any), Regular and Special Assessments as provided for in Section III below, and other matters as provided in or contemplated by this Declaration, the Association Articles, and the Association Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the benefit of the Development in accordance with the provisions of the Declaration, the Association Articles, and the Association Bylaws.

2. Membership in Association. Each Owner (notwithstanding the number of Lots owned) and so long as he or she is the Owner of such Lot(s), shall be a member of the Office Owners' Association and shall be entitled to one (1) vote per every 500 sq. ft. of space owned. Such Owner shall specify in writing to the Association the name of the individual who will hold the Association Membership. In the absence of such written specification, assessments shall nevertheless be charged against the lot and Owner thereof, but there shall be no right to vote the membership. The Association member must be an individual who is either an Owner, or if the Owner is or includes a person other than an individual, the Association Member may be an individual who is a partner if the Owner is or includes a partnership, or an officer of a corporation if the Owner is or includes a corporation, or a beneficiary of the trust if the Owner is or includes a trust, or an Owner of the entity if the Owner is or includes a person other than an individual, a partnership, a corporation, or a trust.

3. Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Architectural Control Committee, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal, or control over members of the Association Board or the Architectural Control Committee), shall be indemnified by the Association, and every other person serving as an employee, or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may, in the discretion of the Board of the Association, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with any proceeding or any settlement

thereof to which he or she may be a party, or in which he or she may become involved, by reason of his or her being or having served in such capacity on behalf of the Association (or in the case of the Developer by reason of having appointed, removed, or controlled, or failed to control members of the Association Board or the Architectural Control Committee) whether or not he or she is a director, an officer, or a member of the Architectural Control Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Association Board shall determine, in good faith, that such officer, director, member of the Architectural Control Committee, or other Person or the Developer, did not act, fail to act, or refuse to act willfully, or with gross negligence, or fraudulent or criminal intent in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Persons may be entitled at law or otherwise. Appropriate insurance may be obtained pursuant to Article V to cover any liability exposure created by virtue of the foregoing indemnification.

4. Non-Liability of Officials. To the fullest extent permitted by law, neither the Developer, the Association President, any directors or officers of the Association, any Architectural Control Committee member, nor any other members of committees of the Association shall be liable to any Association Member or any Owner, Occupant, or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, negligence, or the like made in good faith and which the Developer, the President, any director, any officer, or any member such committees reasonably believed to be within the scope of his or her duties.

### **SECTION III**

#### **Allocation and Payment of Common Expenses**

1. Authority and Purpose of Assessments To accomplish the purposes set forth in Section II above, and to enable the Association to exercise the powers and render the services herein provided, all of the real estate above described, except any portion thereof constituting Common Area, shall be subject to the obligation to pay Regular Assessments and Special Assessments.

2. Regular Assessments

(a) The Association shall assess and each Owner of a Lot shall pay as its Regular Assessment its Proportionate Share of the Common Expense. Except as otherwise specifically provided herein, payment of Regular Assessments shall be in such amounts and payable at such times as may be provided by the Association.

(b) Not later than 15 days prior to the beginning of each fiscal year of the Association, the Association shall make available for review by each Owner a pro forma operating statement or budget for the upcoming fiscal year which shall, among other things, estimate the total Common Expenses to be incurred by such Association for such fiscal year. The Association shall at that time determine the amount of the Regular Assessment to be paid by each Owner and notify the Owner thereof. Each Owner shall thereafter pay to the Association its entire Regular Assessment as so determined on or before the beginning of the Association's fiscal year, which date shall be set forth in the written notice sent to Owners.

(c) If the Association subsequently determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Association President shall then immediately determine the approximate amount of such inadequacy and, with the consent of the Association Board, issue a supplemental estimate of the Common Expenses and determine the revised amount of Regular Assessments to be paid by each Owner for the balance of the year, and the date or dates when due. Each Owner shall be notified of the additional amount required to be paid and the due date of such payment, and each Owner shall pay the additional amount when due. If the estimated total Regular Assessments for a current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Association Board, retain such excess as additional working capital or reserves, or reduce the amount of the Regular Assessments for the next fiscal year. No reduction or abatement of Regular Assessments because of any such anticipated surplus may diminish the quantity, or quality, of services upon which the Common Expenses for the year in question are based, and if supplemental assessments are required, they shall be made as set forth above.

3. Special Assessments. To further the purposes more fully set forth in paragraph 1(a) above, Special Assessments shall be levied by the Association against an Owner to reimburse the Association for:

(a) Costs incurred in bringing an Owner or his Lot into compliance with the provisions of this Declaration, the Association Articles or Bylaws, or the Association Rules.

(b) Fines levied or fixed by the Association Board as provided herein.

(c) Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with, a Special Assessment in accordance

with this Declaration, the Association Articles or Bylaws, or the Association Rules.

(d) Any other charge designated as a Special Assessment in this Declaration, the Association Articles or Bylaws, or the Association Rules.

In the event the Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be a Special Assessment.

3. Limitation. The Association shall at no time expend more money within any one fiscal year than the total amount of the Annual Assessment for that particular year, plus any surplus which it may have on hand from previous Annual or Special Assessments. Except for contracts with utilities, the Association shall not enter into any obligation whatsoever binding the Annual or Special Assessments of any future years to pay for any such obligation, and not such obligation, whether contractual or otherwise, shall be valid or enforceable against the Association.

4. Fiscal Year. The fiscal year of the Association shall be as determined from time to time by the Board of Directors and until change, the same shall be the calendar year.

5. Due Date. The first Annual Assessment shall be for the fiscal year beginning on the first day of January next following recording of this Declaration, and shall be due and payable within thirty (30) days of that date. Thereafter the Annual Assessment shall be due and payable within thirty (30) days of the date on which notice of the amount and due date thereof is sent to each Owner. Failure of the Association to levy the Annual Assessment on or before the first day of any fiscal year shall not invalidate any such Annual Assessment made for that particular year, nor shall failure to levy an Annual Assessment for any one year affect the right of the Association to do so for any subsequent year. Prior to the first assessment as hereinabove provided for, if the Board of Directors shall deem it necessary for the purpose of carrying out the terms of this Declaration, it shall have the right to make a partial assessment in the manner herein provided for and on a pro rata basis for the period of time ending on December 31 of the current calendar year. Thereafter, all assessments shall be made annually as herein provided. The Board of Directors may, at its election, and with respect to any fiscal year, allow the Annual Assessments to be paid in equal quarterly installments in an amount equal to  $\frac{1}{4}$  of the Annual Assessment for that fiscal year. Such quarterly installments shall be due and payable in advance on the first day of each quarter during any such fiscal year, and notice of the election by the Board of Directors to permit quarterly payments shall be given at least ten (10) days prior to the commencement of the fiscal year in question. The permitting of quarterly installments for any fiscal year shall in no way prevent the Board of Directors from requiring single annual payments for any succeeding fiscal year.

6. Annual Accounting. The Board of Directors and the Association, or any person, corporation or entity to whom the Board of Directors and/or the Association transfers or delegates the duties and responsibilities of the Board of Directors and Association shall give an annual accounting to the Owners.

#### **SECTION IV Assessment Lien**

1. Creation of Lien. The Regular and Special Assessments provided for in this Article hereof shall become a lien on the real estate against which it is levied as soon as it is due and payable. The lien of such Regular and Special Assessments shall be subordinate only to the lien of any mortgage created prior to the date such assessment is due and payable.

2. Delinquent Assessments. Regular or Special Assessments shall become, and be considered, delinquent at the following times:

(a) With respect to Regular Assessments payable annually, or any Special Assessments payable in a lump sum, if the assessment is not paid by the Owner liable therefore within thirty (30) days after the date of written notice given by the Association that the same is due and payable; and

(b) With respect to Regular Assessments payable quarterly, or any Special Assessment payable in installments, if any installment is not paid within thirty (30) days after the date of written notice given by the Association to the Owner liable therefore that the same is due and payable; provided that the Association may declare the entire assessment (whether Annual or any Special Assessments), including any future installments thereof then unpaid, to be due and payable within twenty (20) days of notice thereof and, if said assessment is not fully paid within said period, then the same shall be delinquent.

3. Interest. Delinquent assessments shall bear interest from the date the same becomes delinquent at such rate as is set by the Association at the time the assessment is levied, such rate not to exceed the lower of twenty percent (20%) per annum or the highest rate then permitted to be enforced against such Owner by law. The current rate shall be set forth in the notice of assessment.

4. Enforcement. When the assessment becomes delinquent, payment of both principal and interest may be enforced as a lien on said real estate, in proceedings in any court in Kansas having jurisdiction of suits for the enforcement of liens against real property located in Riley County, Kansas. It shall be the duty of the Association to bring suits in the Association's name to collect all or any part of any delinquent assessments and to enforce such liens. In any such suit, the Association may recover therein court costs plus reasonable attorneys' fees. The Association may at its discretion file certificates of nonpayment of assessments in the Riley County Register of Deeds office whenever any assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the Owner of the property described therein a fee of \$250.00, which fee is hereby declared to be a lien upon the real estate so described in said certificate and shall be enforceable and collectible in the same manner as the original assessments provided for herein and the interest thereon. All rights and remedies contained herein are in addition to any other rights and remedies provided at law or in equity.

5. Termination. Liens for delinquent assessments shall continue for a period of five (5) years from the date such assessment became delinquent but not longer, unless within such time a suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit, and until the sale of the property under execution of the judgment establishing the same.

## **SECTION V**

### **Insurance**

1. Authority to Purchase. The Association shall purchase and maintain such insurance, and in such amounts, as it shall determine from time to time. Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Association. The Association shall make same available to the Association Members in order to permit such Members to determine which particular items are included within the coverage. If they so desire, any Owners or Association Members may insure themselves, as they see fit, if any risks which they wish to have covered are not insured by the insurance purchased by the Association.

2. Member's Responsibility. It shall be each Owner's responsibility to purchase, at his own cost, such insurance as he deems appropriate for his own: Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere within the Development, personal liability, and such other insurance which the Owner desires.

3. Non-Liability of Association/Board/President. Notwithstanding anything in this Declaration to the contrary, neither the Association nor any member of its Board nor any officer of the Association nor the Developer shall be liable to any Owner or Association Member, Mortgagee, or other Person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the

coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy, or abandonment of a Lot, or its appurtenances, by an Owner, shall be assessed against that particular Owner in a Special Assessment.

5. Insurance Claims. The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The President of the Association has full and complete power to act for the Association in this regard and may, at his discretion, appoint an authorized representative, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

6. Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association, or any insurance trustee, shall be held or disposed of in trust for the Association and the Owners, as their interests may appear.

## **SECTION VI**

### **Right to Approve Plans**

No building or other structure shall be erected, placed or altered on any lot until all building plans and documents as herein below provided, showing the particulars of the proposed building, structure or alteration have been first approved, in writing, by Developer, or its assignees as stated below in this paragraph, as being in conformity and harmony with planned and existing buildings as to external design, construction and finish, as to location upon the lot with respect to property and building lines, topography, foundation elevation, finished site grade, and other matters governed by or set forth within these Restrictions and the Final Development Plan, and after consultation with the "Architectural Control Committee," (hereinafter referred to as the "ACC") which is hereby declared to consist of the Developer or its designee, and its successors and assigns. For these purposes, as well as for the purpose of enforcing all other rights and restrictions herein contained, the Developer may transfer said rights to the Office Owners' Association at such time as all lots are sold and buildings constructed on the Development.

**SECTION VII  
Required Building Materials**

All building materials and colors shall meet the guidelines set forth in the Wesport Commons Planned Unit Development as approved by the City of Manhattan.

**SECTION VIII  
Signage**

All signage shall meet the guidelines set forth in the Wesport Commons Planned Unit Development as approved by the City of Manhattan. The Association shall maintain as a common expense the signage located at the southeast corner of Lot 1, Final Plat, Westport Commons Commercial Planned Unit Development, in the City of Manhattan, Riley County, Kansas.

**SECTION IX  
Lighting**

All lighting shall meet the guidelines set forth in the Wesport Commons Planned Development District as approved by the City of Manhattan.

**SECTION X  
Required Construction**

1. No building shall be permitted to stand with its exterior in an unfinished condition for a period longer than six (6) months following the date of commencement of construction. Commencement of construction shall be deemed to be the commencement of the digging of the foundation excavation. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in a damaged condition for a period longer than three (3) months following the date of occurrence of damage. Any owner of a structure in violation of this section may be assessed a fine of not less than One Dollar (\$1.00) nor more than Five Hundred Dollars (\$500.00) per day for each day that the violation continues, the assessment at the discretion of the ACC.

2. The fine provided for herein, if not paid when due by the Owner of the building, shall automatically become a lien upon the real estate upon which the structure in violation of this section is situated; provided, however, that such lien shall be interior and subordinate to the



lien of any first mortgage then existing or thereafter placed upon said real estate. Any such fine shall be delinquent if not paid within thirty (30) days from the date of written notification of assessment to the record Owner of the real estate upon which the violation occurs and, if not paid within said thirty (30) day period, shall thereafter bear interest until paid at the maximum rate of interest per annum then allowed by Kansas law. Any such interest shall also constitute an automatic lien which may be enforced and foreclosed by the Developer, its successors and assigns, in any court in Riley County, Kansas, having jurisdiction over suits for the enforcement and foreclosure of such liens.

**SECTION XI  
Yards and Landscaping Required**

1. The entire front, rear and side yards of a building shall be seeded, plugged or sodded with grass at the earliest time following completion of construction of a building on said property as the weather will permit, and in no instance shall seeding, plugging or sodding be delayed because of non-occupancy of the building. Seeding is only permitted during growing seasons that will cover in sixty (60) days. The Developer or the Association may sod a property if not properly seeded, plugged or sodded and assess the Owner of the real estate for the cost thereof and if not paid within thirty (30) days shall be collectible like a lien for an assessment.

2. Landscaping and irrigation shall be provided pursuant to a landscaping performance agreement between the City of Manhattan and the Developer or its assignees. Landscaping and irrigation shall be maintained in good condition.

3. All sites shall be maintained in a clean and orderly manner during construction periods. Erosion shall be controlled on each site while the site is in a disturbed condition. This control shall be accomplished by using bales of straw or other methods approved by the Developer or its assignees.

4. The Association will provide for the ongoing maintenance and care of all landscaping, irrigation and other amenities on its respective lots, as well as streets, sidewalks, curb and gutter, and lighting.

**SECTION XII  
HVAC**

No window wall air condition or heating units shall be permitted.

**SECTION XIII  
Swimming Pools**

No outdoor swimming pools may be erected on any lot.

**SECTION XIV  
Outside Antennas, Dishes and Solar Devices**

All radio or television antennas, antenna or satellite dishes, or solar collectors shall be installed or maintained on any property only with the approval in writing by the Developer or the ACC as to the nature, size, location, appearance and color thereof.

**SECTION XV  
Animals and Pets**

No domesticated, wild or semi-wild mammals or reptiles, and no livestock or poultry of any kind, may be kept or maintained upon any lot. Outside pens, runs or cages may not be constructed or maintained on the real estate.

**SECTION XVI  
Automobiles, Vehicles, Boats and Trailers**

1. No automotive repair or rebuilding, whether for hire or otherwise, shall occur on any lot.
2. No motor home, pickup truck with camper, trailer, bus, camper, inoperative motor vehicle of any nature, boat or other water craft, or other vehicle of any type or description may be stored or parked upon any lot, or upon adjoining street. Parking in other than paved areas is prohibited.

**SECTION XVII**  
**Solar Panels**

No solar panels shall be permitted.

**SECTION XVIII**  
**Offensive Activities**

1. No nuisance or offensive condition or activity shall be maintained or carried out upon the premises.
2. Noxious weeds must be controlled, and shall not be allowed to grow unchecked, in the yard area of any building, during or following the construction of a building thereon. In the event of a violation of this restriction, the Developer or the Association may cause the yard to be treated and assess the cost back to the Owner(s) of the real estate in the same fashion and with the same effect as provided for fines under Section X.

**SECTION XIX**  
**Foundations**

Any exterior basement foundation or foundation wall shall be covered with masonry or stucco to within (12) inches above the adjoining final finished grade of the yard area.

**SECTION XX**  
**Miscellaneous Provisions**

1. Lighting. Exterior lighting shall be shaded so that no direct light is cast upon any property located in a residential district, and so that no glare is visible to any traffic on any public streets.
2. Music. Amplified outdoor music and amplified speakers shall be prohibited.
3. Exterior Christmas Lights and/or Decorations. Exterior Christmas lights and/or decorations may be erected or maintained on any building during a sixty (60) day period beginning November 15 of each calendar year.

4. Hazardous and Toxic Substances Prohibited. The storage, use or disposal of any hazardous or toxic substance on any lot herein shall be strictly prohibited.

5. Trash Receptacles. Trash receptacles for ordinary waste and recyclables shall be maintained in a storage area. The receptacles shall not be permitted to constitute a nuisance or damage to neighboring properties or users. All dumpsters and trash storage areas shall be screened with a six (6) foot sight obscuring screen of masonry or similar material.

6. Safe Condition. Each Owner shall maintain and keep the building, property and common areas at all times in a safe, sound and sanitary condition and repair, and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective real estate.

## SECTION XXI

### Easements

1. Travel Easement. A travel easement from Developer in favor of the City of Manhattan shall be executed in a separate written document, which easement shall be filed with the Riley County Register of Deeds.

2. Utilities and Drainage; Assessment Therefore. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the plat. The Association shall be responsible for and shall maintain all storm drainage easements and detention pond with the cost of such maintenance to be assessed as a common expense.

3. Sidewalks. Sidewalks are hereby dedicated and reserved as shown on the recorded plats.

4. Vehicular and pedestrian access across private streets and parking and to public right of way. Non-exclusive easements appurtenant to the common area are dedicated as shown on the recorded plats for the purpose of pedestrian and vehicular traffic of owners of the real estate above described, their tenants, employees, customers, invitees, licensees, and the employees, customers, invitees, and licensees of the tenants of the owners of said lots, for the purposes of travel across the private streets and parking lots constructed within the development and for the further purpose of ingress, egress, and access to the buildings located on said premises and access to the public right of way of Westport Drive from said parking lots and private streets.

**SECTION XXII**  
**Conservation Areas**

1. Water Retention Facility. There will be constructed water retention facilities for drainage control. The Association shall be responsible for the care, repair, and maintenance of the water retention facilities. Each grantee of the Developer or of any Owner of any real estate, by acceptance of a deed, and any purchaser under any agreement for sale, and each occupant of real estate, for themselves, their heirs, grantees, representatives, guests, invitees, tenants, family members, successors and assigns, hereby agree to and do hereby release and forever discharge Developer and the Association from any liability whatsoever relating to injury or damage sustained as a result of the use of the water retention facility or accident thereon or near the water retention facility.

**SECTION XXIII**  
**Public or Common Areas**

1. Common Areas are described above and are designated and shown on the recorded plats and may be subject to utility easements, drainage easements and conservation areas to the extent shown thereon and to the uses and restrictions which apply to those easement and conservation areas. Common Areas shall be further subject to the provisions of Section III above. The Developer will hereafter cause the Common Areas within the respective lots to be conveyed to the Association for such uses as such associations shall determine, and for the use, benefit and enjoyment in common of the owners of all lots hereby restricted. The Association will be responsible for the maintenance, care and preservation of common open spaces and all natural and landscaping improvements located upon their respective lots and shall have the authority to assess Lots within the development to pay for the costs of such maintenance, care, and preservation, as more fully set forth in Section III above.

2. Title to Common Areas. Developer, at such time as it deems appropriate, will transfer title to the Common Areas to the Association. The recording of the deed or deeds thereto shall be deemed to constitute the acceptance of such deed or deeds by the Association.

3. Easements on Common Areas. The rights and easements of enjoyment as to all Common Areas shall be subject to the right of the Developer or the Association hereafter to assign or convey such sewage, water, drainage, utility or other easements over, through or under all or any part of such areas as they may in their discretion deem necessary or appropriate. The streets and parking areas constructed on the common areas shall be subject to the easements for vehicular and pedestrian access as set forth in paragraph XXI above.

4. Rules and Regulations Pertaining to Common Areas. The following additional rules, regulations and restrictions shall apply to all common areas. In the enforcement of each

such rule, regulation and restriction, each property Owner(s) shall be responsible for the acts of each occupant of their dwelling and each of their social and/or business invitees.

- (a) No structure shall be built into or over any common area.
- (b) No automobile or other motorized vehicle shall be driven, ridden or parked in any common area except for the areas of private streets and parking lots to be constructed with the common areas.
- (c) No boats or flotation devices of any kind shall be allowed on, and no swimming or fishing shall be allowed in any water retention facility.
- (d) No refuse shall be discarded on or about any common area.
- (e) The Developer and the Association shall have the right to make additional rules and regulations pertaining to the use of common areas.

#### **SECTION XXIV Annexation**

The Developer reserves the right to annex and/or add additional land to this Development, in which case the additional land shall be subject to the Restrictions set forth herein, upon the recording of a document by Developer as to such annexed or additional land that incorporates the Restrictions set forth in this Declaration.

#### **SECTION XXV Duration of Restrictions**

Each of the restrictions herein set forth shall continue and be binding upon the Developer, and upon its successors and assigns, until August 31, 2030, and shall automatically be continued thereafter for successive periods of ten (10) years each; provided, however, that the owners of the fee simple title to more than seventy percent (70%) of the combined total of all of the properties hereby restricted in this instrument may release all of the land which is hereby restricted from any one or more of the restrictions herein set forth, in 2030, or at the end of any successive ten (10) year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the office of the Register of Deeds of Riley County, Kansas, and the Planning Department for the City of Manhattan, Kansas.

**SECTION XXVI**  
**Right to Enforce**

The restrictions herein set forth shall run with the land and shall bind the present Owners, their successors and assigns, and all parties claiming by, through or under them shall be taken to hold, agree and covenant with the Owners of the properties hereby restricted and with their successors and assigns, and with each of them, to conform to and to observe said restrictions as to the use of said properties and the construction of improvements thereon. No restriction herein set forth shall be personally binding upon any person, group or entity except in respect to breaches committed during his, her, their or its seizing of, or title to, said land. The Developer, its successors and assigns, the Association, and also the Owner or Owners of any of the real estate hereby restricted, shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions above set forth, in addition to any ordinary legal action for damages, and the failure of the Developer, its successors or assigns, the Association, or of any Owner or Owners of any property hereby restricted, to enforce any of the restrictions herein set forth at the time of its violation shall, in no event, be deemed to be a waiver of the right to do so at any time thereafter. The Developer may, by appropriate agreement made expressly for that purpose, or by means of express words to that effect contained in a deed to any person, group or entity convey all of the rights, reservations and privileges herein reserved by or granted to them in respect to all or any part of said lots and tracts, and upon such assignment or conveyance being made, those assigned those rights, or any one or more of them, at any time or times thereafter shall have the same rights in the same way or manner as those directly reserved by or granted to the Developer in this instrument. The Developer and/or the Association are entitled to recover attorney's fees, interests, and other costs or charges incurred in connection with enforcement of any of these Restrictions.

**SECTION XXVII**  
**Amendment**

At such time as the Developer owns none of the real estate described above, any obligation or right of the Developer shall cease and immediately vest in the Owners of the real estate, and the Association, who may thereafter amend, modify, change or cancel these Restrictions or take action that was theretofore vested in the Developer, in whole or part, by a written agreement adopted by three-fourths ( $\frac{3}{4}$ ) of the property Owners as set forth and subject to the requirements in the Bylaws of the Association.

**SECTION XXVIII**  
**Developer's Control of the Association**

The Developer shall maintain absolute and exclusive control over the Association and the Architectural Control Committee, including appointment and removal of the President and all other officers of the Association, all directors of the Association Board and all members of the Architectural Control Committee, until one hundred percent (100%) of all the Development has been sold or transferred from the Developer to entities other than the Developer or its assigns. Until such time, only the Developer will be entitled to cast any votes with respect to the election and removal of Association officers or directors and members of the Architectural Control Committee, or any other matter requiring the vote or approval of Association Members. The Developer voluntarily may (but shall not be required to) at any time relinquish all or any part of the Developer's control and rights under this Section.

**IN WITNESS WHEREOF**, the undersigned Developer has caused this instrument to be executed this 16 day of October 2009.

**WESTPORT COMMONS DEVELOPMENT, LLC**

By: Angela R. Schultz  
Angela R. Schultz, Authorized Officer

**DEVELOPER**



**ACKNOWLEDGMENT**

STATE OF KANSAS, COUNTY OF RILEY; ss

BE IT REMEMBERED that on this 16 day of October 2009, before me, a Notary Public in and for said county and state, came Angela R. Schultz, authorized officer of Westport Commons Development, L.L.C., a Kansas limited liability company, duly organized and existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be the same person who executed, as such member, the within instrument on behalf of said company, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

Kristen M. Krainbill  
Notary Public

My appt. expires:

