

**LAKEPOINTE SUBDIVISION**

City of Shawnee  
Johnson County  
Kansas

**DECLARATION  
OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
(AMENDED)**

THIS DECLARATION, made on the date hereinafter set forth by Mullin Real Estate, Inc., hereinafter referred to as "Declarant."

**WITNESSETH:**

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

Lots 1 thru 62 Plat 1, Lots 63-119 Plat 2, Lots 120-206 Plat 3, Lots 207-227 Plat 4, Lots 228-278 Plat 5, and Lots 279-367 Plat 6, Lakepointe, inclusive, and Tracts A through C, Plat 2 Tract D, Plat 3 Tracts E through H, Tracts J through P, Plat 5 Tract Q, Plat 6 Tracts R through U, inclusive, in LAKEPOINTE, a subdivision in the City of Shawnee, Johnson County, Kansas, according to the recorded plat thereof;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall insure the benefit of each owner thereof.

**Article I**

**DEFINITIONS**

**Section 1.** "Association" shall mean and refer to Lakepointe Homeowners Association, its successors and or assigns.

**Section 2.** "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**Section 3.** "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**Section 4.** "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tract "A", Lakepointe Subdivision; Tract "B", Lakepointe Subdivision; and Tract "C", Lakepointe Subdivision.

## Article I

### DEFINITIONS (cont.)

**Section 5.** “Lot” shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

**Section 6.** “Declarant” shall mean and refer to Mullin Real Estate, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

## Article II

### PROPERTY RIGHTS

**Section 1. Owners’ Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period of not to exceed sixty (60) days for an infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

**Section 2. Delegation of Use.** Any owner may delegate, in accordance with By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

## Article III

### MEMBERSHIP AND VOTING RIGHTS

**Section 1.** Every owner of a lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment.

**Section 2.** The Association shall have two classes of voting membership:

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

### Article III

#### MEMBERSHIP AND VOTING RIGHTS (cont.)

**Class B.** The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

### Article IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual assessments and special assessments, together with interest, costs, and ~~reasonable attorney's fees~~ collection fees as specified in Section 8 of this article, shall be a charge on the land and shall be a continuing lien upon the property against which each such easement is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also become the personal obligation of the person who was the Owner of such property at the time when the assessment fee due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the properties and for the improvement and maintenance of the Common Area.

**Section 3. Basis and Maximum of Annual Assessments.** Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$180.00 per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, in any of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding year and at the end of each such period of one year, provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation. From and after January 2004, annual assessment will include a per household cost for trash and recycle pick-up as negotiated annually by the Board of Directors with a disposal company.

## Article IV

### COVENANT FOR MAINTENANCE ASSESSMENTS (cont.)

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

**Section 4. Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

**Section 7. Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual Assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 8. Effect of Nonpayment of Assessments; Remedies of the Association.** Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 6 percent (6%) per annum. ~~The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property.~~ Additionally, a late payment fee of \$50 will be incurred should a second notice of late payment be mailed to the homeowner. All legal fees pertaining to collection of Association assessments (including any Late Payment fee) will be paid by the Homeowner. Additionally, the Board is authorized to pursue legal action. The cost of any such action will be paid by the Homeowner. The Association may further place a lien at the Board's discretion. No owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Lot.

## Article IV

### COVENANT FOR MAINTENANCE ASSESSMENTS (cont.)

**Section 9. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

**Section 10. Exempt Property.** All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Kansas shall be exempt from the assessments created herein, except no land or improvements devoted to dwelling use shall be exempt from said assessments.

## Article V

### ARCHITECTURAL CONTROL

**NEW FENCE CONSTRUCTION.** Wooden fences (whether four feet, five feet, or six feet tall) are approved within Lakepointe provided that they satisfy the setback requirements from city streets specified by the City of Shawnee. Homeowner is responsible for obtaining set back requirements. Movements of fences which have been improperly located or which are too high for the site are the responsibility of the homeowner. Anything other than a wooden fence requires specific approval as indicated in the following paragraph.

No building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant, its officers or assigns. Following the sale and closing of the last lot, architectural control and the enforcement of this Article shall become the responsibility of the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## Article VI

### GENERAL PROVISIONS

**Section 1. Enforcement.** The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## Article VI

### GENERAL PROVISIONS (cont.)

**Section 2. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

**Section 3. Amendment.** The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

**Section 4. Annexation.** Additional residential property and Common Area may be annexed to the Properties with the consent of the two-thirds (2/3) of each class of members. Additional land may be annexed by the Declarant without the consent of members within twelve years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

**Section 5. FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

## Article VII

### AMENDMENTS

**Section 1. Motorized Vehicles in Common Area.** No Lakepointe resident, or guest thereof, may operate any motorized vehicle, including but not limited to motorcycles, motorized bicycles, go-carts, three-wheeled vehicles, and all-terrain vehicles, on or about the premises of the common areas owned by Lakepointe Homeowners Association.

**Section 2. Common Areas.** If any Lakepointe resident intends to alter or change in any manner any portion of common areas owned by Lakepointe Homeowners Association, that homeowner must first seek prior approval from the Lakepointe Homeowners Association Board of Directors (the "Board") by submitting a plan to the Board describing the intended change or alteration. If a Lakepointe resident fails to obtain prior approval from the Board, and changes or alters in any manner any portion of the common areas owned by Lakepointe Homeowners Association, that resident will be charged with the costs of restoring the common area(s) to the condition in which the property was before the change or alteration.

**Section 3. Seasonal Displays.** When any exterior scenery or lighting is displayed in observance of the December holiday season, such scenery and lighting must be removed no later than the immediately following March 1st. When any exterior scenery or lighting is displayed in observance of any other holiday, such scenery and lighting must be removed no later than two (2) weeks immediately following that holiday.

**Section 4. Absentee Board Director.** If a current Lakepointe Homeowners Association Board Director is absent from two (2) consecutive regularly scheduled Board meetings ("the Absent Board Director"), the remaining Board Directors may send a letter to the Absent Board Director providing notice

## Article VII

### AMENDMENTS (cont.)

that membership on the Board of Directors is in jeopardy. If, after being provided notice, the Absent Board Director is absent from a third consecutive regularly scheduled Board meeting, the Absent Board Director may be removed from office upon an affirmative vote of a majority of the remaining Board Directors. If the remaining Board Directors vote to remove the Absent Board Director from the office, the procedures for replacing a Board Director shall be followed.

**Section 5. Renting of Units.** Leasing of homes shall not be allowed as a regular practice for business, investment, or similar purposes. The Board of Directors shall be empowered to permit reasonable leasing of homes upon written application to the Board. The Board shall consider each application and may, in writing, permit the leasing of a living unit where necessary to avoid undue hardship on an owner, his or her heirs, and mortgagee. Such circumstances of hardship shall include those instances in which an owner must relocate his or her residence and has difficulty selling the home. In no event, however, shall any home be leased except pursuant to a written agreement approved by the Board of Directors.

- a. This agreement is to include that the home be on the selling market the entire time of lease except for in the case of lease with option to buy.
- b. The home will only be allowed to be under lease with option to buy for one year. IF the lease option expires and the house is not sold, the owner cannot accept another lease option and the owner must reapply for leasing with the Board of Directors. This second agreement will only be affirmed if the house is to be marketed the entire twelve months of the agreement.
- c. All agreements are for one year only and must be reapplied for, every twelve months.
- d. The owner is required to provide information to the Board if lease changes in the course of the twelve month period.
- e. Subsequent requests to lease must be in writing no less than ninety (90) days prior to the expiration of the leasing agreement.
- f. All tenants and the guests are obligated to abide by Lakepointe Homes Association Declarations, these bylaws and all Rules and Regulations of the Association.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 2<sup>nd</sup> day of February, 1994.

Mullin Real Estate, Inc.  
Declarant

By: [signature of James L. Mullin II]

STATE OF KANSAS

COUNTY OF JOHNSON

BE IT REMEMBERED, That on this 14<sup>th</sup> day of February A.D. 1994, before me the undersigned, a Notary Public, in and for the County and State aforesaid, came James L. Mullin II, President of Mullin Real Estate, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be such officer, and who is personally known to me to be such person who executed, as such officer, the within instrument of writing on behalf of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my seal the day and year last above mentioned.

Donald F. Anderson  
Notary Public

(Seal)

Term Expires: 4/6/95

Recorded February 17, 1994    Book: 4247    Page: 275-282

The text of this document includes the following:

**INSTRUMENT AMENDING LAKEPOINTE HOMEOWNERS ASSOCIATION  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

Recorded August 9, 2001    Book: 7250    Page: 626

Refiled October 5, 2001    Book: 7321    Page: 484

**INSTRUMENT AMENDING LAKEPOINTE HOMEOWNERS ASSOCIATION  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

Recorded April 7, 2003    Book: 8843    Page: 299

Refiled June 5, 2003    Book: 9069    Page: 79

**INSTRUMENT AMENDING LAKEPOINTE HOMEOWNERS ASSOCIATION  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

Recorded May 17, 2004    Book: 2004-05    Page: 007839