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 Register of Deeds T20050004496  
 Johnson Co. ROD B:200501 P:007898

Rel: 10  
 Midwest Title Company, Inc.

③ 124 E. Park  
 Olathe, KS 66061  
 #30253

## DECLARATION OF RESTRICTIONS FALLBROOK

### THIS DECLARATION WITNESSETH THAT:

WHEREAS, FALLBROOK DEVELOPMENT, LLC, a Kansas limited liability company (hereinafter referred to as the "Developer"), has filed with the Register of Deeds of Johnson County, Kansas as Page\* of Plat Book\*\*, a plat of the land known as FALLBROOK, a subdivision in the City of Olathe, Johnson County, Kansas; and

\*012446 \*\*200412

WHEREAS, said plat creates said FALLBROOK, a subdivision composed of the following lots, to-wit:

**Lots 1 through 48, FALLBROOK, , 2<sup>nd</sup> Plat, a replat of all of  
 Fallbrook, 1<sup>st</sup> Plat, inclusive, a subdivision in the City of  
 Olathe, Johnson County, Kansas,**

AND WHEREAS, said Developer has heretofore dedicated to the public all of the streets and roads shown on said plat for use by the public;

AND WHEREAS, Developer now owns land described as:

**Lots 1 through 48, FALLBROOK, , 2<sup>nd</sup> Plat, a replat of all of  
 Fallbrook, 1<sup>st</sup> Plat, inclusive, a subdivision in the City of  
 Olathe, Johnson County, Kansas,**

AND WHEREAS, the undersigned is now the owner of all of the lots shown on the aforesaid plat and now desires to place certain restrictions on all of said lots, all of which restrictions shall be for the use and benefit of the undersigned as the present owner thereof and for its future grantees and assigns.

**NOW, THEREFORE,** the undersigned, for and in consideration of the benefits for itself,

its successors and assigns, and its future grantees, hereby agrees and declares that all of the lots shown on the above described plat shall be and they are hereby restricted as to their use in the manner hereinafter set forth.

**DEFINITION OF TERMS USED:**

For the purpose of these Restrictions, the word, "Developer" shall mean FALLBROOK DEVELOPMENT, LLC.

The word "street" shall mean any street, road, drive or terrace of whatever name, as shown on any plat of FALLBROOK.

The word "outbuilding" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant.

The word "lot" as used herein may mean any numbered lot platted by Developer and designated as "FALLBROOK", whether in one or more plats, and upon which a residence may be erected in accordance with the restrictions herein set forth. A "corner lot" shall be deemed to be any lot as platted having more than one street contiguous to it.

"Architectural Control Committee" or "Committee" shall mean the Developer or its successor designated in written instrument properly executed and recorded with the Register of Deeds. When Developer shall have sold all lots in all of the subdivisions designated as "FALLBROOK," whether in one or more plats, the owners of more than 50% of the lots governed herein may appoint the Committee by written instrument in recordable form.

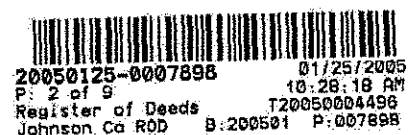
"Homes Association" or "Association" shall mean an organization representing all owners of lots restricted hereby, with definite rules for the conduct of its affairs and allowing for the participation of all owners.

**PERSONS BOUND BY THESE RESTRICTIONS**

All persons and corporations who may own or shall hereafter acquire any interest in the above described lots hereby restricted shall be taken to hold and agree and covenant with the owner of said lots, and with its successors and assigns, to conform to and observe the following covenants, restrictions, and stipulations as to the use thereof and the construction of residences and improvements thereon for a period of time ending on December 31, 2022, provided, however, that each of said restrictions shall be renewable in the manner hereinafter set forth.

**SECTION I - USE OF LAND:**

None of the lots hereby restricted may be improved, used or occupied for other than private residence purposes, and no two family homes or multi-family homes, although intended for residence purposes, may be erected thereon. Any residence erected or maintained on any of the lots hereby restricted shall be designated for occupancy by a single family and each such residence shall have an attached and enclosed garage designed for the parking therein of at least two (2) passenger vehicles. Off-street parking, exclusive of garage interiors, shall be provided and maintained on each lot, hereby restricted, for not less than two (2) automobiles; all off-street parking surfaces, including driveways, shall be initially constructed and thereafter maintained with concrete. No flag poles, pumps, trampolines, outbuildings or similar objects, regardless of the materials used or the intended purpose or use thereof, may be erected or maintained on any of the lots hereby restricted without the prior consent, in writing, of the Architectural Control Committee. Swings, swing sets and slides are not allowed unless constructed of treated lumber,



and then only so long as maintained in good condition. No business or commercial enterprise of any nature shall be conducted on the land herein described if prohibited by municipal ordinance, provided, always, however, that the Developer reserves the right, for itself or its designated real estate representative, to maintain a residential real estate sales office upon any of the herein restricted lots owned by it for the purpose of promoting, advertising for sale, showing and selling lots, either improved or unimproved, within FALLBROOK.

**SECTION II. - REQUIRED HEIGHT OF RESIDENCES:**

Any residence erected on any of the lots hereby restricted shall not be more than two (2) stories in height, provided, however, that a residence more than two (2) stories in height may be erected thereon with the prior consent in writing of the Architectural Control Committee.

**SECTION III. - FRONTAGE OF RESIDENCES ON STREETS:**

Any residence erected wholly or partially on any corner lot shall front or present a good frontage on the street designated by the Architectural Control Committee.

**SECTION IV. - SETBACK OF RESIDENCES FROM STREET:**

(a) No part of any residence, except as hereinafter provided, may be erected or maintained on any of the lots hereby restricted, nearer to the front street or the side street than is the front building or the side building line shown on said plat of FALLBROOK on the lot or lots on which said residence may be erected, provided, however, that the Developer shall have, and does hereby reserve the right in the sale and conveyance of any of said lots, to change any building line shown thereon. No building may be constructed in violation of existing municipal zoning ordinances relating to setback of structures.

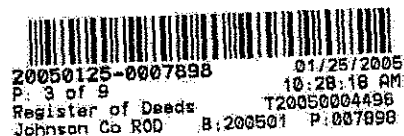
(b) Those parts of the residence which may project to the front of and be nearer to the front street and the side street than the front building lines and the side building lines are as allowed by applicable municipal zoning ordinances.

**SECTION V. - REQUIRED SIZE OF RESIDENCES:**

Unless the City of Olathe, Kansas, shall agree to allow a different size, any residence erected on any lot in FALLBROOK shall contain a minimum enclosed floor area of 1,200 square feet for a ranch style home and a minimum enclosed floor area of 1,600 square feet on a two level home, including a two story, a one and one-half story, or a reverse ranch style home. Split-level, raised ranches and bi-level homes must have a minimum of 1200 square feet.

The words "enclosed floor area" as used herein shall mean and include, in all cases, areas on the first and second floor of the residence enclosed and finished for all-year occupancy, computed on outside measurements of the residence and shall not mean or include any areas in basements, garages, porches, or attics; provided, however, that certain interior areas of the second floor need not be immediately finished for occupancy if the residence is so designed and built that such area can be finished at a later date without any structural changes being made in the exterior of the residence.

The Developer, as long as it controls the Architectural Control Committee, can approve any plans which are not in violation of city code or which are reasonably expected by the Developer to be allowed under a city approved variance from city code.



**SECTION VI. FREE SPACE REQUIRED:**

No residence, including attached garages, attached greenhouses, or porches, shall occupy a greater portion of the lot than is allowed by applicable municipal zoning.

**SECTION VII. - RIGHT TO APPROVE PLANS:**

No building shall be erected, placed or altered on any building lot in this subdivision until the building plans, specifications and plot plan showing the location of such building, have been approved, in writing, as to conformity and harmony of external design with existing structures in the subdivision, and as to location of the building with respect to topography and finished ground elevation by the Architectural Control Committee.

Upon any such request for approval, the party requesting such approval shall submit simultaneously with said request the following documentation:

- (a) a site plan of the house as it will set on the lot and the location of driveways,
- (b) floor plan,
- (c) exterior paint colors.

The documentation listed above is intended only as a minimum requirement and the Architectural Control Committee shall be free to request any and all other documentation that said Committee in its sole discretion deems necessary. All such documentation shall be submitted in duplicate and shall be signed by the party requesting its approval. Upon approval by the Architectural Control Committee, one approved and signed copy will be returned to the applicant.

**SECTION VIII. - MAINTAINING SIGHT DISTANCE:**

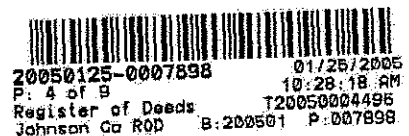
No vegetation, fence or wall which tends to block the view of traffic shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended.

**SECTION IX. - REQUIRED BUILDING MATERIALS:**

Building materials shall be such as comply with the applicable municipal code for residential structures at the time of construction. All wood and masonite exteriors shall be covered with a workmanlike finish of paint, and/or stain, unless another finish is approved in writing by the Architectural Control Committee.

The Developer reserves the right to repurchase, at the sales price paid to Developer, any lot on which the owner thereof fails to begin the commencement of construction of a residence thereon within six (6) months of the recording of the Developer's deed to the initial purchaser of such lot.

No building shall be permitted to stand with its exterior in an unfinished condition for longer than five (5) months after commencement of construction. The term "commencement of construction", as used herein and in the preceding paragraph, shall mean the pouring of foundation walls. In any event, a residential structure shall be completed to the extent that the temporary certificate of occupancy can be issued not later than twelve (12) months after the commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in damaged condition longer than three (3) months after commencement of construction. Any owner of a structure in violation of this section may, in the



discretion of the Architectural Control Committee, be assessed an amount payable to the Developer or its success or not less than One Dollar (\$1.00) nor more than One Hundred Dollars (\$100.00) per day for every day the violation continues.

The amount provided for herein, if not paid when assessed, shall become a lien upon the real estate upon which the structure in violation of this section is located, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed upon said real estate. Such liens may be enforced by the Developer or its successor in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens.

#### **SECTION X. - SODDED YARDS:**

Such portion of the front, rear and side yards of every lot in FALLBROOK as is required by applicable municipal ordinance or regulation to be sodded shall be sodded with grass at the earliest time after construction of a dwelling on said lot as the weather will permit.

#### **SECTION XI. - OUTBUILDINGS PROHIBITED:**


Subject to the other provisions hereof, no building or other detached structures appurtenant to the residence may be erected on any of the lots hereby restricted without the prior consent in writing of the Architectural Control Committee.

#### **SECTION XII. FENCES, WALLS, SHRUBS AND ABOVE-GROUND POOLS:**

No above ground swimming pool, in any location, and no fence which projects nearer to the street than the rear corners of the residence, shall be constructed on any lot hereby restricted. No fence, wall, shrub, hedge, or in-ground or above-ground swimming pool, shall be erected, constructed, planted or maintained upon any of the lots hereby restricted without prior approval as to material, design, shape, location, type and height by the Architectural Control Committee and said Architectural Control Committee shall not approve any fence, wall, hedge or shrub that violates Section VIII hereof. The Architectural Control Committee shall approve all rear yard fences, so long as the fence is set on the rear and side lot property lines, does not project nearer to the street than the rear corners of the residence, complies with the theme for fencing in the subdivision which is uniformity in height and materials and consistency with other fences in the subdivision. All fences in Fall Brook shall be cedar picket fence of dog ear design with alternating picket boards, so that the appearance is essentially the same on either side of the fence. All fences which abut the right of way of either College Boulevard, Woodland Road or the north property lines of the fall Brook subdivision shall be placed on the property line and shall be six (6) feet in height. All other fences in Fall Brook shall be placed on the property line, except when crossing directly through the lawn to connect to the residence, and shall be four (4) feet in height, provided however, that to enclose an in-ground swimming pool, the Architectural Control Committee may approve a fence six (6) feet in height. No fence shall be constructed of link, wire or other similar fence material or of metal, provided however, that wrought iron may be specifically approved in the particular plans or in a particular case by the Architectural Control Committee.

#### **SECTION XIII. - PETROLEUM TANKS PROHIBITED:**

No tank for the storage of fuel may be maintained on any of the lots hereby restricted.

  
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**SECTION XIV. - OUTSIDE ANTENNAS OR TOWERS PROHIBITED:**

No radio or television antennas or towers or satellite dishes may be kept or maintained on any of the lots hereby restricted except within the confines of a dwelling unit erected thereon, except that a satellite dish of not more than 24 inches in diameter is allowed if not visible from the street.

**SECTION XV. - RESTRICTIONS ON MAINTAINING PETS:**

No wild, semi-wild or domestic mammals, reptiles or birds may be kept or maintained upon any of the lots hereby restricted if the keeping of such pets or such number of pets is in violation of municipal ordinance.

**SECTION XVI. - BILLBOARDS PROHIBITED:**

Except for entrance signs, signs for traffic control or safety, signs for community "theme areas", "for sale" signs, such promotional sign or signs as may be maintained by the Developer or agents of the Developer, and yard or garage sale signs during times allowed for said sales by these restrictions, no signs, billboards, objects or advertising devices of any character shall be erected, posted, displayed or permitted to remain upon any of the lots hereby restricted or upon any improvement located upon such lot.

**SECTION XVII. - AUTOMOBILE REPAIRING AND STORAGE OF AUTOMOBILES, BOATS, TRAILERS, ETC.:**

No automotive repair or rebuilding, whether for hire or otherwise, shall occur on any of the lots hereby restricted, except that automotive repairs on a non-commercial basis and not for hire may be conducted in any enclosed garage located on such lot.

No recreational vehicle, two or three wheeled motorized vehicle, truck, trailer, bus, over-cab camper, inoperative motor vehicle of any nature, boat, delivery vehicle or damaged or rusted vehicle of any other type or description may be stored or parked upon any of the lots hereby restricted for more than two (2) hours, except that such storage or parking shall be permitted within the confines of any building built on any of the lots hereby restricted and except that a recreational vehicle owned by a guest of the lot owner may be parked on a lot for not more than fourteen (14) days per year. All doors on garages shall be kept closed except when opened for the purpose of parking or removal of motor vehicles, and motor vehicles shall generally be kept only in the garages of the residences. Nothing in this section, however, shall be so construed as to prohibit the regular parking of not more than two (4) automobiles in running condition and in a reasonable state of repair and preservation on any driveway permitted to be maintained on any of the lots hereby restricted.

**SECTION XVIII. - AIR CONDITIONERS:**

No air conditioning apparatus or unsightly projections shall be attached or affixed to the front of any residence.

**SECTION XIX. - OFFENSIVE ACTIVITIES:**

No noxious or offensive activities, as so defined by the owners of a majority of the lots within FALLBROOK shall be carried on upon any lot, nor shall anything be done thereon which

  
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may be or may become an annoyance to the neighborhood.

**SECTION XX. - MISCELLANEOUS PROVISIONS:**

(a) Garage Doors: All doors on garages located on the lots hereby restricted shall be kept closed except when opened for the purpose of parking or removal therefrom of motor vehicles.

(b) Exterior Clothes Lines and Poles: No exterior clothes lines or poles may be erected or maintained on any of the lots hereby restricted.

(c) Exterior Christmas Lights and/or Decorations: No exterior Christmas lights and/or decorations may be erected or maintained on any of the lots hereby restricted except during a sixty (60) day period beginning November 15th of each calendar year.

(d) Garage, Porch or Basement Sales: No garage, porch or basement sales may be conducted on any of the lots hereby restricted except upon days specifically designated for said sales by the Architectural Control Committee. Absent permission to hold such sales, such sales may be held only on the first full weekend in June and the first full weekend in October of each year.

(e) Dogs and Pets Running at Large: Dogs and pets shall be confined to the lot of the owner(s) thereof. No number of animals, nor breed of animals, nor type of animals shall be allowed as pets which are prohibited by city ordinance.

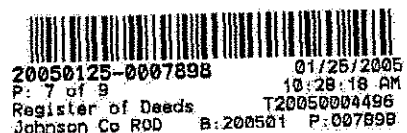
(f) Exterior Sporting Equipment: No exterior tether poles, trampolines, volleyball or badminton posts or nets or similar sporting equipment shall be erected or maintained on any of the lots or tracts hereby restricted, without prior written consent by the Architectural Control Committee. The foregoing sentence shall be deemed to include basketball goals, which shall require approval of said Architectural Control Committee unless said basketball goal shall have a backboard made of glass, plexiglass or other transparent material and is placed on a black colored pole of a material other than wood, such construction being hereby specifically approved by said Architectural Control Committee. Maintenance of basketball goals, poles and structures shall be done by the owner(s) of the lot not less often than annually.

**SECTION XXI. COMMON AREAS:**

(a) The Developer may hereafter cause to be platted additional land owned by it, which said additional land may be made subject to the control of the Homes Association, and may contain recreational or park areas. Upon such future platting, such recreational or park areas shall be designated on such plat(s) as common areas for the use and benefit, among others, of the present owners of all of the numbered lots shown on the plats of "FALLBROOK", whether one or more.

(b) Title to Common Areas: Developer may retain the legal title to the common areas until such time as in the opinion of the Developer a Homes Association for said subdivision is formed and is able to maintain the same, but notwithstanding any provision herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey the common areas subject to utility easements and these Restrictions not later than the time when the Developer or its successor has sold all of the lots in the subdivision. The Homes Association shall accept the conveyance of such common areas.

(c) Easements on Common Areas: The right and easements of enjoyment created hereby as to the common areas shall be subject to the right of the Developer and of the Homes Association to assign or convey sewage, water, drainage and other utility easements over, through



or under all or any part of such common areas.

(d) **Rules and Regulations Pertaining to Common Areas:** The following rules, regulations and restriction shall apply to the common areas as the same may be applicable. In the enforcement of each such rule, regulation and restriction, lot owners shall be responsible for the acts of each resident of their homes and each of their social and/or business invitees.

(1) No automobiles or other motorized vehicle shall be driven, ridden or parked in any common area except at those places within such common areas specifically designated for that use by the Developer.

(2) No refuse shall be discarded in or about the common area.

(3) No structures or vegetation are permitted to be built or planted on the common areas without prior written approval of the Architectural Control Committee.

(4) The Developer or its successor, the Homes Association, shall have the right to make additional rules and regulations pertaining to the use of the common areas.

**SECTION XXII. - 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 December 31, 2022, 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 two-thirds (2/3) of all of the lots hereby restricted may release all of the land which is hereby restricted from any one or more of the restrictions herein set forth at any time 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 Johnson County, Kansas.

**SECTION XXIII. - RIGHT TO ENFORCE:**

The restrictions herein set forth shall run with the land and shall bind the present owner, its successors and assigns, and all parties claiming by, through or under the present owner shall be taken to hold, agree and covenant with the owner of the lots hereby restricted and with its successors and assigns, and with each of them, to conform to and to observe such restrictions as to the use of said lots and the construction of improvements thereon. No restriction herein set forth shall be personally binding upon any corporation, person or persons except in respect to breaches committed during its, his, her or their seizin of, or title to said land. Developer, its successors and assigns, and also the owner or owners of any of the lots 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 Developer, its successors or assigns, or any owner or owners of any lot 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 thereafter. 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 lot restricted hereby, assign or convey to any person or corporation, all of the rights, reservations and privileges herein reserved by or granted to it in respect to all or any part of said lots, and upon such assignment or conveyance being made, its assigns or grantees may at their option exercise, transfer or assign those rights or any one or more of them at any time or times in the same way or manner as those directly

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reserved by or granted to them in this instrument.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed this 7 day of Oct., 2004.

FALLBROOK DEVELOPMENT, LLC


By: [Signature]  
Mark A. Hoelting, Manager

STATE OF KANSAS, JOHNSON COUNTY: ss

THIS INSTRUMENT was acknowledged before me on the 4<sup>th</sup> day of October, 2004, by MARK A. HOELTING, manager of FallBrook Development, LLC, a Kansas limited liability company.

**CHRISTY FULLER**  
Notary Public - State of Kansas  
My Appt. Expires 5/23/04

[Signature] Notary Public  
My appointment expires: 5/23/04

  
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