

**FIRST AMENDMENT TO
HIGHLANDS OF FALCON LAKES
DECLARATION OF RESTRICTIONS**

THIS FIRST AMENDMENT (“**Amendment**”) is made and entered into as of January 14, 2021, by DAY3 DEVELOPMENT, LLC, a Missouri limited liability company, as the developer of the real property described below (the “**Developer**”).

WITNESSETH:

WHEREAS, the Developer is the developer of the residential area in the City of Basehor, Leavenworth County, Kansas, commonly known as “Highlands of Falcon Lakes”; and

WHEREAS, the Developer has previously executed a certain document entitled Highlands of Falcon Lakes Declaration of Restrictions and caused such document to be recorded in the Office of the Register of Deeds of Leavenworth County, Kansas (the “**Recording Office**”) as Document No. 2019R05797 (the “**Declaration**”); and

WHEREAS, the Declaration places certain covenants and restrictions upon the following described residential lots (the “**Lots**”) and the following described common areas:

Lots 1 through 12, Highlands of Falcon Lakes, First Plat, a subdivision in the City of Basehor, Leavenworth County, Kansas.

WHEREAS, the Developer desires to amend the Declaration as provided herein;

NOW, THEREFORE, the parties hereto declare and agree as follows:

A. Capitalized terms used in this Amendment but not defined herein shall have the meanings set forth in the Declaration.

B. Section 11(b) of the Declaration is hereby amended and restated to read as follows:

75220513.1

“(b) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision (as determined by the Developer) (which shall include, but not be limited to, a minimum expenditure on foundation plantings (excluding landscape walls and irrigation) in the front yard in the amount of at least \$1,250 per Duplex Unit (which equates to \$2,500 combined for both halves of a duplex building), plus at least two hardwood trees of 2 inches or more caliper per Duplex Unit with at least 1 tree in the front yard of each Duplex Unit (in addition to any trees planted by the Developer) (which equates to 4 trees over both Duplex Units that comprise one duplex building)). All landscaping shall be installed in accordance with the landscaping plans approved by the Developer and shall be maintained by the Owner in good condition at all times.”

C. Pursuant to Section 23 of the Declaration, this Amendment shall become effective as an amendment of the Declaration and binding upon all of the Lots upon (a) the execution hereof by the Developer, and (b) the recordation hereof in the Recording Office.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed.

DEVELOPER:

DAY3 DEVELOPMENT, LLC,
a Missouri limited liability company

By: _____

Travis Schram, Manager

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on January 14, 2021, by Travis Schram, as Manager of DAY3 DEVELOPMENT, LLC, a Missouri limited liability company.

My Commission Expires:

2/23/2024

[SEAL]

Notary Public in and for said County and State

Print Name: Marcia K Bergin



**FALCON LAKES
DECLARATION OF RESTRICTIONS
ADDITIONAL PHASE
(Highlands of Falcon Lakes)**

THIS DECLARATION is made as of July 25, 2019, by Day3 Development, LLC, a Missouri limited liability company (the “**Developer**”);

WITNESSETH:

WHEREAS, the Developer has executed and filed with the Office of the Register of Deeds of Leavenworth County, Kansas (the “**Recording Office**”), an additional plat of the subdivision known as “Falcon Lakes” as filed as Document No. 2019P00002; and

WHEREAS, such plat adds the following tracts to the subdivision (the “**Additional Tracts**”):

Tract C, Highlands of Falcon Lakes, First Plat, a subdivision in the City of Basehor, Leavenworth County, Kansas.

WHEREAS, the Developer, as the owner of the Additional Tracts, desires to subject the Additional Tracts to the covenants, restrictions, easements, and other provisions contained in that certain Falcon Lakes Declaration of Restrictions, filed with the Recording Office in Book 0830 at Page 1828, as amended by the document filed with the Recording Office in Book 0893 at Page 760 (as amended, collectively, the “**Original Declaration**”).

NOW, THEREFORE, in consideration of the premises, the Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the Additional Tracts shall be, and they hereby are, subject to the covenants, restrictions, easements, and other provisions set forth in the Original Declaration. As contemplated in Article XXI of the Original Declaration, this instrument shall have the effect of subjecting the Additional Tracts to all of the provisions of the Original Declaration as though the Additional Tracts had been originally described therein and subject to the provisions thereof.

Tract C, Highlands of Falcon Lakes, First Plat, is “Common Area” under the Original Declaration.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

DEVELOPER:

Day3 Development, LLC
a Missouri limited liability company

By: _____

Travis Schram, Manager

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me, a Notary Public, on July 25, 2019, by Travis Schram, as Manager of Day3 Development, LLC, a Missouri limited liability company.

My Commission Expires:

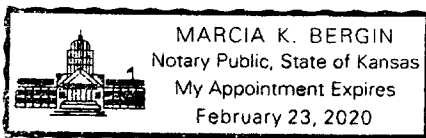
[SEAL]

2/23/20

Notary Public in and for said County and State

Print Name: _____

Marcia K Bergin



HIGHLANDS OF FALCON LAKES
DECLARATION OF RESTRICTIONS

THIS DECLARATION is made as of July 25, 2019, by Day3 Development, LLC, a Missouri limited liability company ("**Developer**").

WITNESSETH:

WHEREAS, Developer has executed and filed with the Register of Deeds of Leavenworth County, Kansas a plat of the subdivision known as "Highlands of Falcon Lakes", which plat includes the following described lots and tracts:

Lots 1 through 12, Highlands of Falcon Lakes, First Plat, a subdivision in the City of Basehor, Leavenworth County, Kansas.

WHEREAS, Developer, as the present owner and developer of the above-described real property, desires to place certain restrictions on such lots and tracts to preserve and enhance the value, desirability and attractiveness of the development and improvements constructed thereon and to keep the use thereof consistent with the intent of the Developer, and all of said restrictions shall be for the use and benefit of Developer and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that the above-described lots and tracts shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth.

1. **Definitions.** For purposes of this Declaration, the following definitions shall apply:

(a) "**Approving Party**" means (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees from time to time), and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Board (or with respect to Exterior Structures and other matters assigned to it, the Architectural Committee).

(b) **“Architectural Committee”** means: (i) prior to the Turnover Date, the Developer (or its designees from time to time); and (ii) on and after the Turnover Date, a committee comprised of at least 3 members of the Homes Association, all of whom shall be appointed by and serve at the pleasure of the Board (subject to the provisions of **Section 14** below).

(c) **“Board”** means the Board of Directors of the Homes Association.

(d) **“Certificate of Substantial Completion”** means a certificate executed, acknowledged and recorded by the Developer with the Recording Office stating that all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; *provided, however*, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in Developer’s absolute discretion at any earlier time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer’s rights to the Homes Association or any other person or entity.

(e) **“City”** means the City of Basehor, Kansas.

(f) **“Common Areas”** means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, irrigation systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the Subdivision, (ii) all landscape easements that may be granted to the Developer or the Homes Association, for the use, benefit and enjoyment of all Owners within the Subdivision, and (iii) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the Subdivision or are otherwise Common Areas of the Homes Association.

(g) **“Declaration”** means this instrument, as the same may be amended, supplemented or modified from time to time.

(h) **“Developer”** means Day3 Development, LLC, a Missouri limited liability company, and its successors and assigns.

(i) **“Duplex Unit”** means, collectively, a Lot and the residential unit that will be, is being or has been constructed thereon.

(j) **“Exterior Structure”** means any structure erected or maintained or proposed to be erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, animal house, outbuilding, fence, privacy screen, patio wall, rock wall, landscape wall, boundary wall, bridge, patio enclosure, sport court, tennis court, paddle tennis court, swimming pool, hot tub, pond, basketball goal, flag pole, antennae (including satellite dishes), swingset, jungle gym, trampoline, sand box, playhouse,

treehouse, batting cage, or other recreational or play structure, and all exterior sculptures, statuary, fountains, and similar yard decor.

(k) **"Golf Course Lot"** means any Lot which has any portion of its boundary in common with the boundary of the Golf Course Property, as specified by Developer.

(l) **"Golf Course Property"** means the golf course located adjacent to or nearby the Subdivision and the related cart paths, clubhouse, parking lot, and other improvements located on land that is not within any platted residential lot.

(m) **"Homes Association"** means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision.

(n) **"Lot"** means each separate building lot shown on any recorded plat of all or part of the Subdivision upon which one side of a duplex building has been, is being, or will be constructed.

(o) **"Master Association"** means Falcon Lakes Homes Association, Inc., a Kansas non-profit corporation.

(p) **"Owner"** means the record owner(s) of title to any Duplex Unit, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees.

(q) **"Recording Office"** means the Office of the Register of Deeds of Leavenworth County, Kansas or such other governmental office in which deeds, mortgages, deeds of trust, and other instruments relating to real property in Leavenworth County, Kansas are to be recorded to give public notice thereof.

(r) **"Subdivision"** means all of the above-described Lots in Highlands of Falcon Lakes, all Common Areas, and all additional property (if any) which hereafter may be made subject to this Declaration in the manner provided herein.

(s) **"Turnover Date"** means the earlier of: (i) the date as of which 95% of all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences have been constructed thereon, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

2. **Use of Land.** Except as otherwise expressly provided in this Declaration, none of the Lots may be improved, used or occupied for other than private residential purposes. No trailer, outbuilding or Exterior Structure shall at any time be used for human habitation, temporarily or permanently; nor shall any residence of a temporary character be erected, moved onto or maintained upon any of the Lots or any Common Areas or be used for human habitation; *provided, however*, that the Developer or others (including, without limitation, builders and real estate brokerage companies) authorized by the Developer shall have the right to use trailers or

temporary buildings or structures or any residence on any Lot or any building that is part of the Common Areas for model, office, sales or storage purposes during the development and build out of the Subdivision. Any such use of any building that is part of the Common Areas by the Developer or project marketing company prior to the filing of the Certificate of Substantial Completion shall be without payment of rent or utilities (other than telephone and internet services) by the Developer and the project marketing company to the Homes Association.

3. **Building Material Requirements.**

(a) Exterior walls of all residences and all appurtenances thereto shall be of masonry (including, stucco, brick or stone), wood shingles, or any other materials specifically approved by the Developer in writing *provided, however*, no exterior front walls shall be covered with materials commonly known as sheet goods that when installed have uncovered seams or seams covered with batts, such as, without limitation, 4 feet by 8 feet panels; *provided further, however*, that tongue and groove woodman siding and “Smart” siding (or equivalent) may be permitted by the Developer. Concrete blocks shall not be permitted as an exterior finished surface. All windows and exterior doors shall be constructed of glass, wood, metal or vinyl clad, fiberglass, or any other materials specifically approved by the Developer in writing. No windows or exterior doors may have “mirror” finishes or be unpainted. Roofs of residences shall be covered with high quality composition shingles (with a minimum 30-year warranty), all of the specific types, color, styles, dimensions and other aesthetic factors specifically approved by the Developer in writing, and have flashing that is complementary in color to the roof color. Metal gutters and downspouts shall be painted a color that is complementary to the color of the trim and color of any stucco or siding. All exterior paint colors shall be neutral, earth-tone colors. Notwithstanding the foregoing provisions of this Section requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the area, as determined by the Approving Party in its absolute discretion, shall be acceptable upon written approval by the Approving Party in its absolute discretion. In the event the City or other government agency with jurisdiction and authority requires specific building materials not authorized above or requires that Owners have additional choices of building materials not authorized above, the Approving Party shall have the right, in its absolute discretion, to establish and regulate in writing the specific types, colors and other aesthetic features of such new or additional building materials.

(b) All applicable exterior components (excluding roofs, brick, stone, decks, and similar components) shall be covered with a workmanlike finish of paint or stain. No residence or Exterior Structure shall stand with its exterior in any unfinished condition for longer than five (5) months after commencement of construction. All exterior basement foundations and walls which are exposed in excess of twelve (12) inches above final grade shall be painted the same color as the body of the residence or shall be covered with material compatible with the structure.

(c) Air conditioning units, gas generators and similar apparatus shall not be attached to or located on the front of any residence and must be adequately screened if in the side yard. No window air conditioning or heating units shall be permitted.

(d) No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue (other than a minimal amount of exterior metal or piping from a direct vent fireplace). All fireplace flues in chimneys shall be capped with a black or color-conforming spark arrestor cap.

(e) Except as otherwise permitted by the Developer in writing, all residences shall have a house number plate in the style(s) approved by the Developer, which plate shall be located adjacent to the front door or, where not practical, at another location approved by the Developer.

(f) All driveways and sidewalks shall be concrete, patterned concrete, bomanite, interlocking pavers, brick or other permanent stone finishes. Crushed gravel, asphalt and natural driveways and sidewalks along the street or from the driveway to the front door are prohibited. No driveway shall be constructed in a manner as to permit access to a street across a rear property line. The driveway approach within the street right-of-way shall be concrete and no more than twenty-four (24) feet in width.

(g) All Duplex Units shall have at least a two-car garage, unless specifically approved by Developer. No car ports are permitted.

(h) Any wood on any decks may be stained (but not painted) in a color approved by the Developer. All deck rails shall be wrought iron (or similar metal) or wood with wrought iron (or similar metal) or wood caps, or other materials specifically approved by the Developer in its discretion.

(i) The Developer, in its discretion, may allow variances from the foregoing requirements of this Section.

4. **Minimum Floor Area.** No residence shall be constructed upon any Lot unless it has a total finished floor area of at least: 1,200 square feet on the main floor for a ranch style residence (excluding a so-called reverse one and one-half story); 1,400 square feet for a reverse one and one-half story with at least 1,000 square feet on the main floor; 1,500 square feet for a two-story residence with at least 900 square feet on the main floor; and 1,400 square feet for a one and one-half story residence with at least 1,000 square feet on the main floor. A "reverse one and one-half story" is a ranch style residence with a basement finished comparable in quality to the main floor with at least one bedroom and bathroom in the basement. Finished floor area shall exclude any finished attics, garages, basements (other than in a reverse one and one-half story residence) and similar habitable areas. The Developer, in its absolute discretion, may allow variances from the minimum square footage requirement.

5. **Approval of Plans; Post-Construction Changes; Grading; Erosion Control.**

(a) Notwithstanding compliance with the provisions of **Section 3** and **Section 4** above, no residence or Exterior Structure may be erected upon or moved onto any Lot

unless and until the building plans, specifications, exterior materials, location, elevations, plot plan, lot grading plan, general landscaping plan, and exterior color scheme (all as and when may be required by the Developer for each particular stage of construction) have been submitted to and approved in writing by the Developer or, in the case of Exterior Structures to the extent provided in **Section 8** below, the Architectural Committee, in each case as to architectural consistency and other aesthetic factors. No change or alteration in such approved building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the Developer or the Architectural Committee, as the case may be.

(b) Following the completion of construction of any residence or Exterior Structure, no significant landscaping change, significant exterior color change or exterior addition or alteration shall be made thereto unless and until the change, addition or alteration has been submitted to and approved in writing by the Architectural Committee. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same materials, colors, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Architectural Committee.

(c) All final grading of each Lot shall be completed by the Owner in connection with construction of the residence and shall be in accordance with any master grading plan approved by the City, any related grading plan furnished by the Developer for the development phase containing the Lot and any specific site grading plan for the Lot approved by or for the Developer. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. Water from sump pumps shall be drained away from adjacent residences (actual and future). No rock or other walls or any surface rock landscaping shall be installed along or near any lake without the prior written consent of Developer. No changes in the final grading or drainage of any Lot shall be made by or for the Owner without the prior written approval of the Approving Party and (if required) the City. The Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master grading plan or any approved lot grading plan, or for the Developer not requiring a lot grading plan or compliance therewith or for the quality or composition of any soil or subsurface material. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots which the Developer or any engineer or other party may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.

(d) During the construction of the residence and improvements on such Lot and until the Lot is completely established with grass, the Owner, at its expense, shall install and properly maintain hay bales, silt fencing and such other erosion and silt control devices as are necessary or required by law to prevent stormwater runoff from the Lot depositing silt or other debris onto adjacent Lots, Common Areas and streets. In connection therewith, the Owner shall comply with all Federal, state and local

governmental laws, regulations and requirements, with all applicable permits, and with all requirements imposed by the Developer, including, without limitation, preparation of inspection reports, and the Owner shall be responsible for any and all governmental fines and assessments that may be levied or assessed as a result of a failure of the Owner to so comply.

(e) All site preparation, including, but not limited to, tree removal, excavation, grading, rock excavation/removal, hauling, and piling, etc., shall be at the sole expense of the Owner or builder. All removed trees and excavated rock, etc., shall be removed from the Subdivision and shall not be spoiled within the Subdivision, except as expressly approved by the Developer.

(f) All building plans and plot plans shall be designed to minimize the removal of existing trees and shall designate those trees of three inches (3") or more caliper (as measured two feet (2') above the ground) to be removed. In the construction of the residence and related improvements on each Lot, the Owner shall retain and protect all existing trees that are not within the footprint or the immediate area of the residence and the driveway, except for any trees specifically authorized by the Developer for removal. Developer does not warrant or guarantee the present or future condition of any trees. Developer shall have no liability for any damage that may have occurred to trees in connection with the development of the Lots and surrounding areas.

(g) Approval of plans or specifications by the Developer or any other Approving Party is not, and shall not be deemed to be, a representation or warranty that such plans or specifications comply with good engineering/architectural practices or any governmental requirements.

(h) Neither the sale of a Lot by the Developer to a particular builder nor the inclusion of a particular builder on a list of builders building in the area or on a list of approved builders constitutes a representation, endorsement or guaranty by the Developer or any real estate broker/salesperson of the financial stability, qualifications, work or any other matter relating to such builder. Neither the Developer nor any real estate broker/salesperson guarantees or warrants the obligations or construction by any builder.

6. **Set Backs.** The Developer shall have the right to establish, in its discretion, the setback lines for a specific Lot, to the extent they are greater than the minimum setbacks required by the City. All Golf Course Lots shall have a fence setback of at least 35 feet from Golf Course Property measured parallel to the property line, except as otherwise approved by the Developer.

7. **Commencement and Completion of Construction.** Unless the following time periods are expressly extended by the Developer in writing, construction of the residence on a Lot shall be commenced (meaning digging of the foundation) within three (3) months following the date of delivery of a deed from the Developer to the first purchaser of such Lot and shall be completed within nine (9) months after such construction commencement. In the event such construction is not commenced within such three (3) month period (or extension thereof, if any), the Developer shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Lot from the Owner, free and clear of all mortgages, mechanic's

liens and similar liens, for an amount equal to 95% of the sale price of the Lot from the Developer to the first purchaser thereof. If such repurchase right is exercised by the Developer, the Owner of the Lot in violation of this construction commencement provision shall not be entitled to reimbursement for taxes, insurance, interest or other expenses paid or incurred by or for such Owner and all taxes and installments of special assessments shall be prorated between Developer and the Owner as of the closing of the repurchase by Developer.

8. **Exterior Structures.**

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except: (i) strictly in accordance with and pursuant to the prior written approval of the Architectural Committee as to the applicable building plans, specifications, exterior materials, location, elevations, lot grading plans, landscaping plans and exterior color scheme, and (ii) in compliance with the additional specific restrictions set forth in **Section 8(b)** below or elsewhere in this Declaration. Notwithstanding the foregoing sentence, the approval of the Architectural Committee shall not be required for: (y) any Exterior Structure erected by or at the request of the Developer, or (z) any Exterior Structure that: (A) has been specifically approved by the Developer prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the Developer, and (B) has been built in accordance with such approved plans. Compliance with the specific requirements or restrictions set forth in **Section 8(b)** below or elsewhere in this Declaration shall not automatically entitle an Owner to install or maintain any specific Exterior Structures, and the Approving Party, in its discretion, shall always have the right to additionally regulate, prohibit, condition or otherwise restrict any Exterior Structure notwithstanding such otherwise compliance.

(b)

(i) No fence and privacy screen may be installed unless and until an application containing such information as may be required by the Approving Party has been submitted to and approved in writing by the Approving Party. No fence shall be installed without a permit from the City (where required) and compliance with all applicable laws and codes. Only black wrought iron (or similar metal) fences, or privacy screens in the specific styles, materials and colors approved by the Developer shall be permitted on the Lots. All fences, retaining walls and privacy screens shall be ornamental and shall not disfigure the property or the neighborhood or interfere with drainage. All fences and privacy screens shall be constructed with a finished side facing outward. No wood, chain link, wire or similar fence shall be permitted. Each gate must be at least four feet in width. Unless and until otherwise specifically approved in writing by the Approving Party, (A) no fence or privacy screen shall exceed fifty-four inches (54") in height, (B) no fence or privacy screen shall be constructed or maintained on any Lot nearer to the front street than the rear corners (as determined by the Approving Party) of the residence, (C) no fence shall be constructed or maintained on any Lot more than one foot from the property line of the Lot, except to the extent necessary for such fence to abut the residence and except for

fences around swimming pools, hot tubs and patio areas, (D) all fences (except for fences around swimming pools, hot tubs and patio areas) must be joined to or abutting any previously existing fences on adjacent Lots, and (E) all perimeter fences shall be stair-stepped to follow the grade of the Lot.

(ii) All basketball goals shall be permanently installed, free standing and not attached to the residence. All backboards shall be transparent and all poles shall be black. There shall be only one basketball goal per Lot. No "homemade" backboards or poles shall be permitted. There shall be no lighting of the basketball area. There shall be no hours of use of the basketball goal past 11:00 p.m. or before 6:00 a.m. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

(iii) All recreational or play structures must be approved in advance by the Approving Party and (if allowed): (A) shall be made of materials and dark color metal and/or natural wood color approved in writing by the Approving Party, (B) (other than basketball goals) shall be located behind the rear corners (as determined by the Approving Party) of the residence, and (C) (other than basketball goals) shall be located at least ten (10) feet from each side boundary and at least ten (10) feet from the rear boundary of the Lot.

(iv) No aboveground type swimming pools shall be permitted. All swimming pools shall be fenced and all pool pumps, heaters and similar equipment shall be adequately screened from view of other residences and all hot tubs shall be fenced or otherwise adequately screened, all in accordance with City requirements and the other provisions of the Declaration. All swimming pools and hot tubs shall be kept clean and maintained in operable condition at all times.

(v) All outside dog houses shall be located in the back yard near the residence, shall be painted or stained (where appropriate) the same color of the residence, and shall have roofs that are the same as the residence.

(vi) The following Exterior Structures shall be prohibited on the Lots: animal runs, trampolines, portable basketball goals, tennis courts, sport courts, tree houses, batting cages, compost piles, storage sheds, detached greenhouses, detached garages and other detached outbuildings.

(vii) No Exterior Structure that is prohibited under Section 9 below shall be permitted under this Section.

(c) No fence, wall or other Exterior Structure installed by or for the Developer or Homes Association anywhere in the Subdivision may be removed or altered by any Owner or other person without the prior written consent of the Approving Party.

9. **Buildings or Uses Other Than for Residential Purposes; Noxious Activities, Miscellaneous Use Restrictions.**

(a) Except as otherwise provided in **Section 2** above, no residence or Exterior Structure, or any portion thereof, shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; *provided, however*, that this restriction shall not prevent an Owner or occupant from maintaining an office area or operating a home-business occupation in his residence in accordance with the applicable ordinances of the City so long as the residential character of the area is maintained.

(b) No illegal, noxious or offensive activity shall be carried on with respect to any Duplex Unit; nor shall any trash, ashes, grass clippings, leaves, or other refuse be thrown, placed or dumped upon any Duplex Unit or Common Area; nor shall anything be done which may be or become an annoyance or a nuisance to the Subdivision, or any part thereof, except as may be otherwise expressly permitted by this Declaration. The foregoing shall not be construed to limit or restrict the rights or powers of the Developer or the Homes Association under this Declaration.

(c) Each Owner shall properly maintain his Duplex Unit in a neat, clean and orderly fashion. The exterior portions of the residence and all Exterior Structures on the Lot (including, without limitation, any fence that may have been installed by or for the Developer) shall be kept and maintained by the Owner in good condition and repair at all times. Each residence exterior shall be repainted by the Owner, as needed. Any significant exterior color change must be approved in advance in accordance with **Section 5(b)** above.

(d) Unlicensed, unregistered or inoperative motor vehicles are prohibited, except in an enclosed garage.

(e) Overnight parking of motor vehicles, boats, trailers, buses, campers, or similar apparatus of any type or character in public streets, Common Areas or vacant lots is prohibited. Motor vehicles shall be parked overnight in garages or on paved driveways only. Except as provided in **Section 9(g)** below, no vehicle (other than an operable passenger automobile, passenger van or small truck), commercial truck or van, bus, boat, jet-ski, trailer, camper, mobile home, or similar apparatus shall be left or stored overnight on any Lot, except in an enclosed garage.

(f) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited in the Subdivision except during such limited time as such truck or vehicle is actually being used in the Subdivision during normal working hours for its specific purpose.

(g) Recreational motor vehicles of any type or character are prohibited except:

(i) When stored in an enclosed garage;

(ii) When temporarily parked on the driveway for the purpose of loading and unloading (maximum of 24 hours every 14 days); or

(iii) With prior written approval of the Approving Party.

(h) No television, radio, citizens' band, short wave or other antenna, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be unenforceable because it violates a statute or the First Amendment or any other provision of the United States Constitution or the Kansas Constitution, the Approving Party shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Duplex Unit. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes may be installed, with the prior written consent and in accordance with the requirements of the Approving Party (i.e. as to size and location), so as to render the installation as inoffensive as possible to other Owners.

(i) No solar panels, windmills, or similar devices may be installed without the prior written consent of the Approving Party. Should any part or all of the restriction set forth in the preceding sentence be unenforceable because it violates a statute or any provision of the United States Constitution or the Kansas Constitution, the Approving Party shall have the right to establish rules and regulations regarding the location, size, and other aesthetic aspects of solar panels, windmills and similar devices so as to reasonably control the impact of such solar panels, windmills and similar devices on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Duplex Unit.

(j) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard. Sculptures, bird baths, bird feeders, fountains, yard art, and similar decorative objects are allowed on the exterior of the residence or in the yard only with the specific written approval of the Approving Party.

(k) Exterior holiday lights shall be permitted only between November 15 and January 31 and may not remain on the residence or any trees or bushes on the Lot during any other period. Except for such holiday lights, all exterior lighting shall be white (clear) and not colored. All exterior landscaping lighting must be approved in advance by the Approving Party.

(l) No garage sales, sample sales, estate sales or similar activities shall be held within the Subdivision without the prior written consent of the Board.

(m) No speaker, horn, whistle, siren, bell or other sound device shall be located, installed or maintained upon the exterior of any residence or in any yard, except intercoms, devices used exclusively for security purposes, and stereo speakers used in accordance with any rules specified by the Board.

(n) All residential service utilities shall be underground, except with the approval of the Developer.

(o) In the event of vandalism, fire, windstorm or other damage, no residence or Exterior Structure shall be permitted by the Owner to remain in damaged condition for longer than three (3) months after the date of the damage (except with the specific written consent of the Approving Party) and the Owner shall cause the residence to be rebuilt in all events within twelve (12) months after the date of the damage (except with the specific written consent of the Approving Party).

(p) No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any Duplex Unit. Storage shall be permitted under a deck provided such area is screened with materials and in the manner approved by the Approving Party as otherwise authorized herein. No temporary storage pod or container may remain on any Lot (other than in an enclosed garage) for more than ten (10) days in any sixty (60) day period.

(q) No outside fuel storage tanks of any kind shall be permitted (except standard propane tanks for outdoor grills).

(r) Except for signs erected by or for the Developer or its approved real estate brokerage company for the Subdivision, no sign, advertisement or billboard may be erected or maintained on any Lot, except that:

(i) One sign not more than three feet (3') high and/or three feet (3') wide may be maintained offering the Duplex Unit for sale. For newly constructed homes offered for sale, only a real estate brokerage company sign (which may include a rider identifying the builder), and not also a separate sign for the builder, may be used if a real estate brokerage company is involved.

(ii) One garage sale sign not more than three feet (3') high and/or three feet (3') wide is permitted on the Lot when a permitted garage sale is being held, provided such signs are erected in accordance with City code and are installed no more than two (2) hours before the start of the sale and are removed within two (2) hours after the close of the sale.

(iii) Political signs not more than six (6) square feet are permitted on the Lot for up to forty-five (45) days before the election but must be removed within two (2) days after the election.

(iv) Small school-related activity signs may be maintained near the residence while the student is residing in the residence. Event celebration signs ("new baby", "graduation", etc.) may be maintained for up to seven (7) days.

No signs offering a Duplex Unit for lease or rent shall be allowed in the Subdivision. Prior to the filing of the Certificate of Substantial Completion, no sign offering a new Duplex Unit or vacant Lot for sale shall be allowed in the Subdivision (other than signs of the Developer-approved new home real estate brokerage company for the Subdivision). Without limiting the foregoing, no sign shall be permitted which (A) describes the condition of the Duplex Unit or the Lot, (B) describes, maligns, or refers to the reputation, character or building practices of the Developer, any builder, any

realtor, or any other Owner, or (C) discourages or otherwise impacts or attempts to impact a party's decision to acquire a Lot or Duplex Unit in the Subdivision. In the event of a violation of the foregoing provisions, the Developer and/or the Homes Association shall be entitled to remove any such offending sign, and in so doing, shall not be subjected to any liability for trespass, violation of constitutional or other rights, or otherwise. If these limitations on the use of signs, or any part thereof, are determined to be unlawful, the Board shall have the right to regulate the use of signs in a manner not in violation of law.

(s) No sign (other than community marketing signs approved by the Developer) shall be placed or maintained in any Common Area without the approval of the Approving Party.

(t) No trash, refuse, or garbage can or receptacle (other than construction dumpsters during construction) shall be placed on any Duplex Unit outside a residence, except after sundown of the day before and until the later of sundown or 6:00 p.m. on the day for regularly scheduled trash collection and except for grass bags placed in the back or side yard pending next regularly scheduled trash collection.

(u) Garage doors shall remain closed at all times except when necessary for ingress and egress.

(v) No Duplex Unit or part thereof shall be rented or used for transient or hotel purposes, which are defined as: (A) rental of less than six (6) months duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, and similar services; or (B) rental to roomers or boarders, (*i.e.*, rental to one or more persons of a portion of a residence only). No lease may be of less than an entire residence. Each lease shall be in writing, shall require that the tenant and other occupants acknowledge the existence of this Declaration and agree to comply with all provisions of this Declaration, shall provide that the lease shall be subject in all respects to the provisions of this Declaration and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of this Declaration or such rules and regulations shall be a default under the lease. In the event a tenant fails to comply with the terms of this Declaration or such rules and regulations, the Owner shall, if so directed by the Board and to the extent permitted by law, terminate the lease and evict the tenant. Prior to the commencement of the term of a lease, the Owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect. Notwithstanding the existence of a lease, the Owner shall remain liable for all obligations under this Declaration with respect to the Duplex Unit and the improvements thereon and the use thereof and the Common Areas, and the Owner shall cause the rented property to be maintained to the same general condition and standards as then prevailing for the Owner-occupied residences in the Subdivision.

(w) Each of the Developer and the Homes Association may enforce the foregoing restrictions and other provisions of this Declaration by establishing, levying and collecting monetary fines and other enforcement charges, having vehicles, trailers or

other apparatus towed away at the Owner's expense, or taking such other lawful actions as the Developer or the Homes Association, in its sole discretion, deems appropriate.

10. **Animals.** No animals of any kind shall be raised, bred, kept or maintained on any Duplex Unit except that dogs, cats and other common household pets may be raised, bred, kept or maintained so long as: (a) they are not raised, bred, kept or maintained for commercial purposes, (b) they do not constitute a nuisance, and (c) the City ordinances and other applicable laws are satisfied. Pets with vicious propensities (as determined by the Board) are prohibited. Bees, cows, horses, swine, goats, sheep, poultry, other domesticated farm animals, undomesticated (wild) animals, exotic animals, and animals requiring special permits from any government authority are prohibited. All pets shall be confined to the Duplex Unit of the Owner except when on a leash controlled by a responsible person. Owners shall immediately clean up after their pets on all streets, Common Areas and Lots owned by others.

11. **Lawns, Landscaping and Gardens.**

(a) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, all lawns, including all areas between the residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; *provided, however*, that the Owner of a Lot may leave a portion of the Lot as a natural area with the express written permission of the Approving Party. No lawn on a Lot shall be planted with zoysia or buffalo grass.

(b) Within sixty (60) days after the issuance of any permanent or temporary certificate of occupancy for the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision (as determined by the Developer) (which shall include, but not be limited to, a minimum expenditure on foundation plantings (excluding landscape walls and irrigation) in the front yard in the amount of at least \$1,200 per Duplex Unit (which equates to \$2,400 combined for both halves of a duplex building), plus at least one hardwood tree of 1½ inch or more caliper in the front yard (in addition to any trees planted by the Developer) (which equates to 2 trees over both Duplex Units that comprise one duplex building)). All landscaping shall be installed in accordance with the landscaping plans approved by the Developer and shall be maintained by the Owner in good condition at all times.

(c) Within 60 days after the issuance of a permanent or temporary certificate of occupancy for the residence, each Lot shall have a sprinkler system installed (with a keyed control panel and water tap located outside of the residence) covering all sod and landscape areas in the entire front, rear and side yards of the Lot. Each Owner shall use the sprinkler system as necessary or appropriate (as determined by the Approving Party) during the late spring, summer and early fall months. The Homes Association shall be provided with a key to the control panel by the Owner and shall have the right to operate the sprinkler system if the Owner fails or refuses to do so as directed by the Approving Party. No Owner shall water the Lot such that there is significant runoff onto any adjacent Lot or Common Area.

(d) To the extent any of the foregoing items are not completed prior to occupancy, the Owner shall escrow funds, in an amount (if any) and manner determined by the Developer, to assure such installation when weather permits.

(e) All vegetable gardens shall be located behind the rear corners of the residence (as determined by the Approving Party) and at least five (5) feet away from the boundary of the Lot. No vegetable garden(s) shall exceed one hundred (100) square feet in size on any Lot, except with the prior written consent of the Approving Party.

(f) Each Owner shall keep the lawn of the Lot in good condition at all times and uniformly mowed and clipped with a length of grass not to exceed four inches and reasonably free from weeds.

(g) The Developer shall have the right (but not the obligation) to install one or more trees on each Lot. The type(s) and location(s) of tree(s) and timing of planting shall be selected by the Developer in its absolute discretion. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot (including any trees planted by or for the Developer, but excluding those in a Common Area maintained by the Homes Association).

12. **Easements for Public Utilities; Drainage; Maintenance.**

(a) The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of, drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way of record or shown on any recorded plat of the Subdivision or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, governmental authorities, the Developer and the Homes Association, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners and the Homes Association as a cross easement for utility line service and maintenance.

(b) The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through all unimproved portions of each Duplex Unit for the purpose of performing the powers and duties of the Homes Association, including performing any maintenance obligations relating to such Duplex Unit, and maintaining any Common Area. The Developer shall have the right to execute and record, at any time, an easement with respect to specific areas utilized as provided above.

(c) The Developer and the Homes Association, through its authorized representative(s), may at any reasonable time enter any Duplex Unit, without being deemed guilty of trespass, for the purpose of inspecting the Duplex Unit and any improvements thereon to ascertain any compliance or noncompliance with the requirements and terms of this Declaration and/or any plans approved hereunder.

(d) The Developer and the builder of the residence on the Lot shall have reasonable access to each Duplex Unit for the purpose of inspecting and maintaining erosion control devices until final stabilization of the full Duplex Unit is achieved by sodding and landscaping. No Owner shall prevent or inhibit the Developer's or the builder's reasonable access for such purpose, and no Owner shall remove or damage any erosion control devices installed by the Developer or the builder. Each Owner shall notify the builder and the Developer of any damage to such erosion control devices.

(e) In the event any easement rights granted in this Section are exercised with respect to any Duplex Unit, the party so exercising such easement rights shall exercise the same in a reasonable manner so as to minimize all adverse effects on the Owners and shall promptly repair any damages to such Duplex Unit resulting from the exercise of such easement rights and restore the Lot to as near the original condition as possible.

(f) No water from any roof, downspout, sump pump, perimeter basement drain or surface drainage shall be placed in or connected to any sanitary sewer line.

13. **Common Areas.**

(a) The Developer shall have the right (but not the obligation) to provide Common Areas for the use and benefit of the members of the Homes Association. The size, location, nature and extent of improvements and landscaping in the Common Areas, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

(b) The Developer and its successors, assigns, and grantees, the Owners, and the Homes Association and its members shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended and permitted use of such Common Areas. Such right and easement in favor of the Owners shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.

(c) Any ownership by the Homes Association of any Common Area and the right and easement of enjoyment of the Owners in the Subdivision as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, pipeline, maintenance, electric, telephone, television and other utility easements over, under, upon and through such Common Area, as provided in **Section 12** above.

(d) No Owner shall improve, destroy or otherwise alter any Common Area without the express written consent of the Approving Party.

(e) Owners of Lots adjacent or nearby the Common Areas shall prevent erosion and pollutant discharges and runoff onto the Common Areas.

(f) The following rules, regulations and restrictions shall apply to the use of the Common Areas:

(i) No automobiles, motorcycles, all-terrain vehicles, or other motorized vehicles or apparatus of any kind shall be allowed in the Common Areas except for parking in any designated parking lots and except for the Developer's and Homes Association's mowing and otherwise maintaining the Common Area.

(ii) No refuse, trash, grass clippings, leaves or debris shall be discarded or discharged in or about the Common Areas except in designated trash bins.

(iii) Access to the Common Areas shall be confined to designated areas, except that Owners of Lots adjacent to the Common Areas may have access to the area from their respective Lots (where applicable).

(g) Each of the Developer and the Homes Association shall have reasonable access through Lots adjacent to the Common Areas for the purposes of maintenance and improvement thereof, but any party exercising such right shall be responsible for repairing any damage caused by it to adjacent Lots in connection with the use of such access right.

(h) Each of the Developer and the Homes Association shall have the right from time to time to make, alter, revoke and enforce additional rules, regulations and restrictions pertaining to the use of any Common Area.

(i) Each of the Developer and the Homes Association, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa. In addition, each of the Developer and the Homes Association shall have the right to transfer to the City (but only with the City's consent) title to or easements over all or any part of the Common Areas so that such become public areas maintained by the City.

14. **Architectural Committee.**

(a) No more than two (2) members of the Board shall serve on the Architectural Committee at any time. When more than one (1) person is an Owner of any particular Lot, no more than one (1) person from such Lot may serve on the Architectural Committee at any given time. The positions on the Architectural Committee may be divided by the Board into two classes with staggered two-year terms. The foregoing provisions of this subsection shall not apply until the Turnover Date. Until the Turnover Date, the Developer or its designees shall be the Architectural Committee.

(b) The Architectural Committee shall meet as necessary to consider applications with respect to any Exterior Structures that require the approval of the Architectural Committee as provided in **Section 8** above and to consider any other matters within the authority of the Architectural Committee as provided in this Declaration. The Architectural Committee shall designate one or more of its members to whom applications may be delivered. The Architectural Committee may specify a form

of application that must be used by applicants. A majority of the members of the Architectural Committee shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Committee.

(c) At each meeting, the Architectural Committee shall consider and act upon written and complete applications that have been submitted to it for approval in accordance with this Declaration. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the individual members of the Architectural Committee, in their discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. All decisions of the Architectural Committee shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Architectural Committee may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions. Any written application complete with all required drawings and other information that is not acted upon by the Architectural Committee within twenty-five (25) days after the date on which it is received shall be deemed to have been approved.

(d) After the Turnover Date, no member of the Architectural Committee may participate in approving any application which concerns such member's Lot and is submitted to the Architectural Committee. If such an application for approval is submitted to the Architectural Committee, and the application fails to receive approval or denial, the Board shall appoint a temporary member to the Architectural Committee for the limited purpose of considering and acting upon such application.

(e) After the Turnover Date, any applicant or other person who is dissatisfied with a decision of the Architectural Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven (7) days after the date the Architectural Committee renders its written decision. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board, in their discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. Any decision rendered by the Board on appeal of a decision of the Architectural Committee shall be final and conclusively binding on all parties (other than the Developer) and shall be deemed to be the decision of the Architectural Committee for all purposes under this Declaration. The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Architectural Committee, including, without limitation, requiring payment to the Homes Association of a reasonable fee by the appealing party.

15. **No Liability for Approval or Disapproval; Indemnification.**

(a) Neither the Developer, the Homes Association, nor any of their officers, directors, managers, representatives or agents, nor any member of the Architectural Committee or the Board (or any committee thereof) shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions or guidelines.

(b) If any Owner (other than the Developer) commences a lawsuit or files a counterclaim or crossclaim against the Homes Association, the Board, the Architectural Committee, any other committee, or any individual, director, officer or committee member, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Homes Association, the Board, committee or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including, without limitation, reasonable attorneys' fees. Such recovery right shall constitute a lien against the Owner's Lot and shall be enforceable against such Lot.

(c) To the fullest extent permitted by law, the Homes Association shall indemnify each officer and director of the Homes Association, each member of the Architectural Committee, and the Developer (to the extent a claim may be brought against the Developer by reason of its appointment, removal of or control over, or failure to control, any such other persons) (each, an "**Indemnified Party**") against all expenses and liabilities, including, without limitation, attorneys' fees, reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of the Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association), provided the Indemnified Party did not act, fail to act or refuse to act with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.

16. **No Liability for Swimming Pool or Play Equipment.** By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with use of any swimming pool and any diving board and/or slide and any playground or other equipment that may be installed as part of the Common Areas or as part of the common areas maintained by the Master Association. The Developer, the Homes Association, and the Master Association and the officers, directors, managers, representatives, and agents of the Developer, the Homes Association, and the Master Association shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent permitted by law, each Owner, for himself, the members of his family, his guests and invitees, shall be

deemed to have released and agreed never to make a claim against the Developer, the Homes Association, and the Master Association and/or any officer, director, manager, representative or agent of the Developer, the Homes Association, and the Master Association for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of the swimming pool area or any playground area, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

17. **Potential View Obstruction.** No Owner has any right to an unobstructed view beyond the boundaries of the Owner's Lot. No Owner shall be entitled to prevent the construction or location of any structure, trees, landscaping or other item on any other part of the Subdivision, where otherwise permitted by this Declaration, because such structure, trees, landscaping or other item obstructs any view from the affected Lot.

18. **General Easement and Release Regarding Golf Course Property.**

(a) **Grant of Easement.** The Developer and each Owner hereby establishes for the benefit of the Golf Course Property a non-exclusive easement (the "**Easement**") over and across, and in the entire airspace above, all of the Lots, for the purpose of the flight of golf balls through the air over the Lots and the entry of golf balls upon and/or across the Lots and any improvement constructed, or to be constructed, upon the Lots.

(b) **Character of Easement.** The Easement shall be appurtenant to the Golf Course Property and the Golf Course Property shall be the dominant tenement, and each and every legal parcel or lot in the Lots shall be the servient tenement.

(c) **Use of Easement.**

(i) **Limited Purpose.** The Easement shall be used only for the purposes set forth in subsection (a) above. Nothing herein shall be construed to: (1) permit entry upon the Lots by any individual for any purpose, including, but not limited to, the retrieval of golf balls, or (2) limit the construction of improvements on the Lots.

(ii) **Limited Use.** The Easement shall be specifically limited to use by each owner and operator of the Golf Course Property and their licensees, invitees, employees and agents. The rights reserved and created hereunder are for the benefit of the Parties (as that term is defined below) and each of them.

(d) **Term.** The term of the Easement shall be from the date of recordation of this Declaration in the Recording Office to and until such time as no portion of the Golf Course Property has been operated as a golf course for a period of at least twenty-four (24) consecutive calendar months, which twenty-four (24) month period shall not include any time the Golf Course Property is under construction or closed for refurbishment, redesign or other similar reasons.

(e) **Waiver and Indemnification.**

(i) Each Owner, owner(s), operator(s), and designer(s) of the Golf Course Property, and all of their respective divisions, subsidiaries, and affiliated companies, and all of their respective officers, directors, shareholders, agents, representatives, employees, and professional consultants, and all of their respective successors and assigns (each a **“Party”** and collectively, the **“Parties”**), and each of them, shall not be liable for any cost, expense (including actual attorneys’ fees), loss, damage, injury (including death), or claim of any kind or character, including, but not limited to, causes of action for negligence, nuisance, trespass, assault, or battery, to any person or property arising from or related to any use of the Easement. All persons holding any right, title or interest in any portion of the Lots (an **“Owner”**) shall hold such interest subject to the terms and conditions of this Declaration, and each such Owner hereby waives and releases any and all claims and demands against the Parties arising from or related to any such cost, expense, loss, damage, injury, or claim.

(ii) Furthermore, each such Owner shall indemnify, defend, and hold harmless the Parties, and each of them, from and against any and all claims, demands, actions, suits, losses, liabilities, damages, costs, and expenses (including actual attorneys’ fees) (collectively, the **“Claims”**) arising from or related in any way whatsoever to: (A) any use of the Easement over, above, across or in such Owner’s Lot, whether the Claims are made or incurred by such Owner, any member of such Owner’s family, any invitee of such Owner and/or any other person, or (B) any use of the Easement over, above, across, or in any Lot provided the Claims are incurred by such Owner, a member of such Owner’s family and/or an invitee of such Owner. Payment shall not be a condition precedent to recovery under the foregoing indemnification, and the obligation of each Owner to defend the Parties as set forth above shall be the obligation to defend with counsel approved by the indemnified Party. The obligations of such Owners hereunder shall run with the Lots for the benefit of the Golf Course Property and shall be binding on all successive owners of any portion of the Lots. Notwithstanding anything to the contrary herein: (Y) nothing contained in this paragraph shall operate to relieve any Party for any Claims which are determined by a court of competent jurisdiction to have been solely and proximately caused by the intentional misconduct or gross negligence of such Party, and (Z) the waiver and indemnification provisions of this subsection shall not extend to the individual responsible for placing the golf ball in flight if such flight is the sole and proximate cause of the personal injury or property damage.

(iii) When more than one person is the Owner of any Lot, such persons shall be jointly and severally liable hereunder as the Owner of said Lot. The term **“Owner”** shall not, in any event, include any person holding an interest in a Lot merely as security for the performance of an obligation.

(f) Buffers. Without limiting the generality of the foregoing in this Section, each Owner understands and agrees that the owner(s), operator(s), and designer(s) of the Golf Course Property cannot install fences, trees, and other buffers, or reconfigure or remodel the Golf Course Property, to hinder errant golf balls from entering such Owner’s

specific Lot, as such installations and remodeling may diminish the enjoyment of the Lots of other Owners or other property. Nothing herein contained shall be deemed to establish or grant a view easement or any other similar easement or right in favor of any Owner or any owner of other property near the Golf Course Property. The owner(s) and operator(s) of the Golf Course Property may install fences, trees, and other improvements on the Golf Course Property and remodel the Golf Course Property as and when they so desire.

19. **Party Wall and Related Matters.**

(a) The boundary line between the two attached Duplex Units on adjoining Lots will be the center line of the wall dividing the two Duplex Units (the “**Wall**”), notwithstanding the fact that the boundary line shown upon any plat or lot split creating such Lots may not be located precisely upon said center line of the Wall. The Owner of each such Lot from time to time shall have the full rights of ownership, use and occupancy of the residence located primarily upon such Lot and the Owner of one Duplex Unit shall not have any right, title or interest in any part of the Duplex Unit located primarily upon the other parcel.

(b) Subject to the provisions of subsections (e) and (f) below, the Owners of the attached Duplex Units from time to time shall, at their sole cost and expense, make all repairs and perform all maintenance required upon the surface and non-structural elements of the portion of the Wall which serves as an interior wall of the living unit owned by such Owner; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner’s tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (f) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant’s, agent’s, employee’s, guest’s or invitee’s) negligence or wrongful act necessitated such repairs or maintenance.

(c) Subject to the provisions of subsections (e) and (f) below, the Owners of the attached Duplex Units from time to time shall make or cause to be made all repairs and maintenance to all utilities to the extent common to both Duplex Units, including, but not limited to, water, electrical and other applicable utilities and to the structural elements of the Wall, with the cost of such repairs or maintenance to be paid one-half (1/2) by the Owner of each Duplex Unit; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner’s tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (f) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant’s, agent’s, employee’s, guest’s or invitee’s) negligence or wrongful act necessitated such repairs or maintenance. If an Owner shall refuse or fail to pay its share of such costs, the other Owner may pay such amount and be entitled to a lien against the other Owner’s Duplex Unit as provided in subsection (i) below.

(d) Any and all repairs and maintenance which either Owner or both Owners jointly shall be required to perform hereunder or shall elect to perform shall be done in a

good and workmanlike manner and in full compliance with all laws, ordinances, statutes, rules and regulations of any federal, state, county or local government or governmental agency or authority. Any such repairs and maintenance, once commenced, shall thereafter be diligently pursued to completion. Each Owner shall have a reciprocal easement across the other Owner's Duplex Unit to allow reasonable access for the purpose of making inspections and performing any maintenance or repairs. Such easement rights shall be exercised in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the other Owner's Duplex Unit.

(e) Each Owner shall keep and maintain insurance coverage with respect to the portion of the building owned by such Owner and with respect to the Wall, insuring the improvements against damage or destruction by fire, lightning, wind, hail, explosion, vandalism and other hazards generally covered in the area under standard special form coverage homeowner's property insurance, in an amount equal to not less than full replacement cost. If requested by the Homes Association, the Homes Association shall be named as an additional insured on such insurance coverage and shall be provided, upon request, with a certificate of insurance evidencing such property coverage. Such insurance shall contain provisions whereby the insurer consents to the mutual waiver of liability contained in subsection (f) below. In the event of any fire or other casualty with respect to the building or any portion thereof, the building or such portion shall be repaired or restored by the Owners according to a uniform architectural plan and finish approved by the Approving Party. The cost of such repair and restoration shall be apportioned to each Owner according to the actual cost of repair and restoration of such Owner's Duplex Unit.

(f) Notwithstanding anything to the contrary herein, each Owner of attached Duplex Units hereby releases the other Owner, its tenants, agents, employees, guests or invitees from all liability for damage due to any act or neglect of the other Owner, its tenants, agents, employees, guests or invitees (except as herein provided) occurring to the building which is or might be incident to or the result of a fire or any other casualty which is or would be covered by the casualty insurance policy described in subsection (e) above or which is covered by any other insurance actually maintained by the Owner or its tenants or other occupants; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful act or omission of either Owner or their respective tenants, guests or invitees.

(g) Neither Owner shall have the right, except with the prior written consent of the other Owner, to (A) make any alterations or additions to the Wall or any part thereof, except non-structural interior alterations made within the living unit in the building, or (B) take any action which will adversely affect the structural integrity or sound transmission prevention qualities of the Wall. To the extent any Owner shall make any alterations or additions to the Wall, (i) such Owner shall, at its sole cost and expense, keep and maintain such alterations or additions in good condition and repair, and (ii) in the event of any fire or other casualty, the restoration and repair of such alterations or additions shall be at the sole cost and expense of such Owner.

(h) The exterior of the building of attached Duplex Units shall be decorated and maintained with a uniform color(s) and uniform roofing and other materials, all of which shall be agreed upon by the two Owners and approved by the Approving Party. The expense of maintaining, repairing and replacing the roof, gutters and other exterior portions of the Duplex Unit shall be borne by the Owner of such part of the building. Should there be a disagreement as to the necessity, time, manner or extent of repainting the exterior of the building or the repair, maintenance or replacement of any exterior part of the building, the Board shall resolve the dispute and if either Owner shall fail or refuse to pay its share of such expense, the other Owner may have the work done and be entitled to a lien against the other Owner's Lot as provided for in subsection (i) below.

(i) Should an Owner fail or refuse to pay any costs or expenses as provided in this Section, the non-defaulting Owner shall be entitled to a lien on the Lot of the Owner so failing or refusing to pay to the extent of such costs or expenses. Payment of such costs or expenses may be enforced as a lien on such Duplex Unit through proceedings in any court in Leavenworth County, Kansas having jurisdiction of suits for the enforcement of such liens. Such non-defaulting Owner may also file a certificate of nonpayment of such costs and expenses against the defaulting Owner's Lot in the Recording Office. Such liens shall continue for a period of five years from the date of nonpayment of the costs or expenses, unless suit shall have been instituted for collection of the costs or expenses, in which case the lien shall continue until payment in full or termination of the suit against the defaulting party.

(j) To the extent not inconsistent with the provisions of this Section, the laws of the State of Kansas regarding party walls shall be applicable with respect to each Wall.

(k) Each Owner shall have a reciprocal easement of access, ingress, and egress to its Duplex Unit across the shared drive serving the building; provided, however, no Owner shall block or impair the use of any portion of a shared drive so as to restrict the access to the adjacent Owner's drive or Duplex Unit. Subject to the provisions of subsections (e) and (f) above, the Owners of the attached Duplex Units from time to time shall make or cause to be made all repairs and maintenance to all shared drives to the extent common to both Duplex Units, with the cost of such repairs or maintenance to be paid one-half (1/2) by the Owner of each Duplex Unit; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner's tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (f) above, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance. If an Owner shall refuse or fail to pay its share of such costs, the other Owner may pay such amount and be entitled to a lien against the other Owner's Duplex Unit as provided in subsection (i) above.

20. Covenants Running With The Land; Enforcement; Waivers.

(a) The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all

subsequent grantees of all parts of the Subdivision. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; *provided, however*, that neither the Developer, the Homes Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Lot owned by such Owner.

(b) Each of the Developer and the Homes Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, the agreements, restrictions, reservations and other provisions set forth in this Declaration, in addition to pursuing an action at law for damages. To the maximum extent permitted by law, if the Developer or the Homes Association files such court action and is successful in obtaining a judgment or consent decree in such court action or otherwise obtaining compliance by the breaching party, the Developer and/or Homes Association shall be entitled to receive from the breaching party, as part of the judgment or decree or any dismissal or settlement, the actual legal fees, costs and expenses incurred by the Developer and/or Homes Association with respect to such action.

(c) To the extent permitted by law, the Board of Directors of the Association may also enforce all of the foregoing agreements, restrictions, reservations and other provisions of this Declaration by establishing, levying and collecting reasonable monetary fines for violation thereof.

(d) Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer and the Homes Association may (but is not obligated to) enter the Lot to correct the violation, and, in addition or in lieu thereof, may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Lot involved.

(e) No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation.

(f) In addition to the specific provisions of this Declaration that allow the Developer to make certain decisions or give permission for certain matters, the Developer or the Homes Association (acting through the Board) may, under special situations or circumstances as determined by it, allow variances or waivers of the requirements or terms set forth in this Declaration. Any such variation or waiver so granted by the Developer or the Homes Association shall not constitute a waiver of such requirement or term in any other situation or under any other circumstances.

(g) No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver

shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; *provided, however*, that a duly authorized, executed and delivered waiver by the Homes Association, acting upon a decision of the Board, respecting a specific violation or potential violation of this Declaration with respect to a specific Lot shall constitute and be deemed as a waiver by all other persons and entities (other than the Developer) of such violation or potential violation.

(h) In accordance with applicable law, the Homes Association may adopt reasonable rules, regulations, restrictions, policies, guidelines, and procedures, including, without limitation, the establishment and imposition of monetary fines, regarding: (i) the use of the Common Areas and the personal conduct of the members and their guests thereon, (ii) the implementation of provisions set forth in this Declaration or in any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof), (iii) the establishment and enforcement of construction and design criteria and aesthetic standards, or (iv) the regulation of behavior which violates this Declaration or any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof) or which adversely affects the use and enjoyment of other properties or the Common Areas.

21. **Relationship to City Ordinances.** The provisions of this Declaration shall be valid and enforceable even if such provisions are more restrictive than the City's ordinances or other applicable laws. The parties entitled to enforce this Declaration shall also have the right to enforce, in a private civil action under this Declaration, all City ordinances and other laws that are applicable to the Subdivision, even if the City or other applicable governmental authority chooses not to enforce the same. All such City ordinances and other applicable laws that are in effect from time to time shall be automatically incorporated into this Declaration by this reference.

22. **Assignment of Developer's Rights.** The Developer shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey and transfer to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties, and responsibilities of the Developer hereunder.

23. **Release or Modification of Restrictions.**

(a) The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both: (i) the Owners of at least sixty percent (60%) of the Lots within the Subdivision as then constituted, and (ii) if prior to the recording of the Certificate of Substantial Completion, the Developer, or if after the recording of the Certificate of Substantial Completion, the Homes Association under

express authority and action of the Board. After the recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of seventy-five (75%) or more of the full number of directors on the Board of the Homes Association and then approved at a duly held meeting of the members of the Homes Association (called in whole or in part for that purpose) by the affirmative vote of Owners owning at least sixty percent (60%) of the Lots. Notwithstanding the foregoing, no amendment adopted under this subsection may remove, revoke or modify any right or privilege of Developer under this Declaration at any time without the written consent of Developer.

(b) Anything set forth in this Section to the contrary notwithstanding, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend, change or add to any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if: (i) any of the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision, or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision, (iii) the amendment is necessary to cause this Declaration to comply with any applicable law, (iv) a typographical or factual error or omission needs to be corrected in the opinion of the Developer, (v) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision, or (vi) so long as Developer owns any Lots, to make any other amendment the Developer may determine to be appropriate. No such amendment by the Developer shall require the consent of any Owner or the Homes Association.

(c) If the rule against perpetuities or any rule against restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the individual(s) signing this Declaration on behalf of the Developer and the now-living descendants of the individual(s) signing this Declaration on behalf of the Developer as of the date of such execution.

24. **Extension of Subdivision.** The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) by executing, acknowledging and recording in the Recording Office a written instrument subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; *provided, however*, that such

declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in its discretion.

25. **Severability**. Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

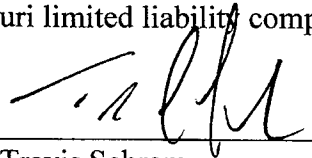
26. **Governing Law**. This Declaration shall be governed by and construed in accordance with the laws of Kansas.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first written above.

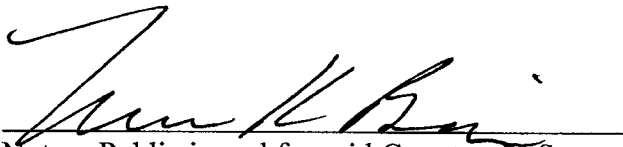
DEVELOPER:

Day3 Development, LLC,
a Missouri limited liability company

By: 
Name: Travis Schram
Title: Manager

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

This instrument was acknowledged before me, a notary public, on July 25, 2019, by Travis Schram, as Manager of Day3 Development, LLC, a Missouri limited liability company.


Notary Public in and for said County and State

Print Name: Marcia K Bergin

My Commission Expires:

2/23/20
[SEAL]

