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FIRST AMENDMENT TO FALCON LAKES  
HOMES ASSOCIATION DECLARATION

THIS FIRST AMENDMENT is made and entered into this 6<sup>th</sup> day of May 2002, for the purposes hereinafter described.

R E C I T A L S:

WHEREAS, on the 13<sup>th</sup> day of December, 2001, Falcon Lakes L.L.C., a Kansas corporation ("Developer"), executed a document entitled "Falcon Lakes Homes Association Declaration" (the "Homes Association Declaration") which imposed certain restrictions upon the property composed of Lots 1 through 40 of Falcon Lakes, 1<sup>st</sup> plat, a subdivision of the City of Basehor, Leavenworth County, Kansas (the "Property"). Said Declaration was recorded on February 4, 2002, in Book 0830, Page 1843, of the Leavenworth County, Kansas, records; and

WHEREAS, the parties to this Amendment hereby amend the Homes Association Declaration to change the following to-wit:

NOW THEREFORE Article IV Annual Assessments is deleted and replaced with the following:

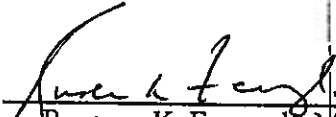
ARTICLE IV. ANNUAL ASSESSMENTS

For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision, other than Lots then owned by the Developer, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV, and, until further action of the Homes Association, shall be \$350.00 per year. If and when the initial Recreational Facilities contemplated in Article XIV below are substantially completed and available for use, the amount of the annual assessment shall be automatically increased by an amount (not to exceed \$150.00) to be established by the Developer.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Falcon Lakes Homes Association Declaration to be duly executed as of the date first above written.

FALCON LAKES L.L.C.,  
a Kansas corporation

"Developer"

By:   
Name: Rustom K. Ferzandi, Manager

STATE OF KANSAS  
COUNTY OF LEAVENWORTH } ss  
FILED FOR RECORD

2002 MAY 10 A 9:33

STACY R. DRISCOLL  
REGISTER OF DEEDS

STATE OF KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )



BE IT REMEMBERED that on this 6<sup>th</sup> day of May, 2002, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Rustom K. Ferzandi, Manager of Falcon Lakes L.L.C., who is personally known to me to be the same person who executed the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

  
Notary Public

My commission expires:  
8-13-02



**SECOND AMENDMENT TO FALCON LAKES  
HOMES ASSOCIATION DECLARATION**

20<sup>th</sup> THIS SECOND AMENDMENT is made and entered into this day of December 2002, for the purposes hereinafter described.

RECITALS:

WHEREAS, on the 13<sup>th</sup> day of December 2001, Falcon Lakes L.L.C., a Kansas corporation ("Developer"), executed a document entitled "Falcon Lakes Homes Association Declaration" (the "Homes Association Declaration") which imposed certain restrictions upon the property composed of Lots 1 through 40 of Falcon Lakes, 1<sup>st</sup> plat, a subdivision of the City of Basehor, Leavenworth County, Kansas (the "Property"). Said Declaration was recorded on February 4, 2002, in Book 0830, Page 1843, of the Leavenworth County, Kansas, records; and

WHEREAS, on the 6<sup>th</sup> day of May 2002, Falcon Lakes L.L.C., executed a document entitled "First Amendment to Falcon Lakes Homes Association Declaration" (the "First Amendment"), which deleted Article IV Annual Assessments and replaced with the amended Article IV Annual Assessments. Said Amendment was recorded on May 10, 2002, in Book 0838, Page 0510, of the Leavenworth County, Kansas records; and

WEHREAS, the parties to this Amendment hereby amend the Homes Association Declaration to change the following to-wit:

NOW THEREFORE Article IV Annual Assessments is deleted and replaced with the following:

**ARTICLE IV. ANNUAL ASSESSMENTS**

For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision, other than Lots then owned by the Developer, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV, and, until further action of the Homes Association, shall be \$230.00 per year. If and when the initial Recreational Facilities contemplated in Article XIV below are



**THIRD AMENDMENT TO FALCON LAKES  
HOMES ASSOCIATION DECLARATION**

THIS THIRD AMENDMENT is made and entered into this 24  
day of February 2003, for the purposes hereinafter described.

**RECITALS:**

WHEREAS, on the 13<sup>th</sup> day of December 2001, Falcon Lakes L.L.C., a Kansas corporation ("Developer"), executed a document entitled "Falcon Lakes Homes Association Declaration" (the "Homes Association Declaration") which imposed certain restrictions upon the property composed of Lots 1 through 40 of Falcon Lakes, 1<sup>st</sup> plat, a subdivision of the City of Basehor, Leavenworth County, Kansas (the "Property"). Said Declaration was recorded on February 4, 2002, in Book 0830, Page 1843, of the Leavenworth County, Kansas, records; and

WHEREAS, Developer wishes to add Lots 41 through 98, and Tracts "C" and "D" of Falcon Lakes 2<sup>nd</sup> Plat to the Homes Association Declarations.

NOW THEREFORE, the parties to this Amendment hereby amend the Homes Association Declaration to add the following described lots to-wit:

Lots 41 through 98, and Tracts "C" and "D" of Falcon Lakes 2<sup>nd</sup> Plat, a subdivision in the City of Basehor, Leavenworth County, Kansas, according to the recorded plat thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to Falcon Lakes Homes Association Declaration to be duly executed as of the date first above written.

**FALCON LAKES L.L.C., Developer  
A Kansas Limited Liability Company  
By Its Manager, Ferzandi Consulting, Inc**

  
\_\_\_\_\_  
**Rustom K. Ferzandi, President**



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**FALCON LAKES  
HOMES ASSOCIATION DECLARATION**

THIS DECLARATION is made as of the 13 day of December, 2001, by Falcon LAKES L.L.C. ("Developer").

WITNESSETH:

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

All of Lots 1 through 40 and Tracts A and B, FALCON LAKES FIRST PLAT, a subdivision of land in the City of Basehor, Leavenworth County, Kansas, according to the recorded plat thereof.

WHEREAS, Developer, as the present owner and developer of the above-described lots, desires to create and maintain a residential neighborhood and a Homes Association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby subjects all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

**ARTICLE I. DEFINITIONS**

For purposes of this Declaration, the following definitions shall apply:

- (a) "Lot" means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the amount of annual and special assessments dues with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot".
- (b) "Subdivision" means collectively all of the above described Lots and tracts in Falcon Lakes, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.
- (c) "Developer" means Falcon Lakes, L.L.C., and its successors and assigns.
- (d) "Owner" means the record owner(s) of title to any Lot, including the Developer.

- (e) "Common Area" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler 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 and/or the Homes Association, for the use, benefit and enjoyment of all the Owner's within the Subdivision, (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, whether or not any "Common Area" is located on any Lot.
- (f) "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.
- (g) "Board" means the board of Directors of the Homes Association.
- (h) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all or, at the Developer's discretion, substantially all of the Lots in the Subdivision (as then composed or 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 its absolute discretion at any 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.
- (i) "Turnover Date" means the earlier of: (i) the date as of which 95% of all of the Lots in the Subdivision (as then composed or contemplated by the Developer) have been sold by the Developer and residences have been constructed thereon, or (ii) the date Developer, in its absolute discretion, selects as the Turnover Date for this Declaration.
- (j) "City" means the City of Basehor, Kansas.

## ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Until the Turnover Date, the Homes Association shall have two classes of membership, namely, Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (c) of Section 2 of Article IV below.



After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the District and every such Owner shall be a member.

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. During any period in which a member is in default in the payment of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

Subject to the foregoing, the Homes Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

### ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

1. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:
  - (a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the Subdivision; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the homes Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.
  - (b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any government authority, utility or any other similar person or entity therein or thereto.
  - (c) To maintain public liability, worker's compensation, fidelity, fire an extended coverage, director and officer liability, indemnification and

other insurance with respect to the activities of the Homes Association, the Common Areas and the property within the Subdivision.

- (d) To levy the assessments and related charges, which are, provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.
- (e) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer and the Homes Association and its members and the sharing of the expenses associated therewith.
- (f) To enter into and perform agreements with the Developer and the Homes Association and its members and the sharing of the expenses associated therewith.
- (g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operation and maintenance of common Areas, and planning and coordination of activities.
- (h) To engage the services of a security guard or security patrol service.
- (i) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Subdivision; and to do any other things necessary or desirable in the judgment of the board to keep any property in the Subdivision neat in appearance and in good order.
- (j) To exercise any architectural, aesthetic or other control and authority given and assigned to the Homes Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Subdivision.
- (k) To make, amend and revoke reasonable rules, regulations, and restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines.
- (l) To exercise such other powers as may be set forth in the Articles of incorporation or Bylaws of the Homes Association.

2. In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to Owners within the Subdivision:

- (a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences.)
- (b) The Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by or for the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

#### ARTICLE IV. ANNUAL ASSESSMENTS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision, other than Lots then owned by the Developer, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided by the Homes Association and, until further action of the Homes Association, shall be **\$350.00** per year. If and when the initial Recreational Facilities are substantially completed and available for use, the optional amount of \$150.00 per year may be paid to Falcon Lakes Homes Association for use of the facilities.
2. The rate of annual assessment upon each Lot in the Subdivision may be increased (a) by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year for each of 2002 through 2006, (b) after 2006 by the board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year, or (c) at any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting are entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2 of Article III above.
3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 2002) and shall be due and payable on January 1<sup>st</sup> of each year; provided, however, that (i) the first assessment for each Lot shall be due and payable only upon the transfer or ownership

of the Lot from the Developer to another party (including a builder) and shall be prorated as of the date thereof and (ii) if the effective date of any increase in the rate of assessment is other than January 1<sup>st</sup>, a proper portion (as determined by the board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect thereto.

#### ARTICLE V. SPECIAL ASSESSMENTS

In addition to the annual assessments provided for herein, the Board (a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon) and (b) shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as specified in Section 2 of Article III above that require any expenditure during any period in an amount in excess of the general and reserve funds of the Homes Association available therefor. Each such special assessment shall be due and payable upon giving notice of the assessment to such Owner.

#### ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment within 30 days after the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the rate of 10% per annum from the delinquency date until paid, which interest shall become part of the delinquent assessment and the lien on the lot. Should the Homes Association engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with interest thereon and collection costs, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due.
2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to such foreclosure or deed in lieu

thereof but shall not release such Lot from liability for any assessment applicable to periods thereafter.

3. Payment of a delinquent assessment may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the office of the Register of Deeds of Johnson County, Kansas, wherever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$100.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.
4. Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under the execution of judgment establishing the same.
5. The Homes Association may cease to provide any or all of the services (including, without limitation, trash services) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Homes Association.

#### ARTICLE VII. LIMITATION ON EXPENDITURES

The Homes Association shall at no time expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus and available reserves which it may have on hand from prior years. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 2 of Article III above.

#### ARTICLE VIII. NOTICES

1. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.
2. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and

addressed to the person or last known person entitled to such notice at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

#### ARTICLE IX. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves the right (but not the obligation), from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration such other adjacent or nearby (without reference to any street, park or right of way) lands as it may now own or hereafter acquire (regardless of whether the additional property is part of the property platted as Falcon Lakes First Plat or is known by a name other than Falcon Lakes First Plat) by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such additional property to all of 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 absolute discretion.

#### ARTICLE X. AMENDMENT AND TERMINATION

1. This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement in one or more counterparts signed by (a) the Owners of at least two-thirds (2/3) of the Lots within the Subdivision as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer.
2. Anything set forth in Section 1 of this Article X to the contrary notwithstanding, except the provision relating to the requirement of the City's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording an appropriate instrument in writing for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision of any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable Veteran's Administration, Federal Housing Administration or similar programs, laws and regulations, or (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision.
3. If the rule against perpetuities 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 now-living children and grandchildren of the individual signing this Declaration on behalf of the Developer as of the date of such execution.

## ARTICLE XI. ASSIGNMENT

1. The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over 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 any or all such purposes by the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. 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 hereunder.
2. The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

## ARTICLE XII. COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. 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 provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.
2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under 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 or default.
3. No waiver of any violation or default 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.

## ARTICLE XIII. 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.

#### ARTICLE XIV. COMMON AREAS

1. The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot, cabana and/or other recreational facilities ("Recreational Area") in a place within the Subdivision or on property near the Subdivision and to make such facilities available for use by residents of the Subdivision. The size and components of the recreational area shall be determined by the Developer in its absolute discretion.
2. If the Recreational Area is so constructed and made available for use by residents of the Subdivision, the following shall apply:
  - (a) Upon substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of any mortgages or similar liens, title to the Recreational Area to the Homes Association. Such title transfer shall be by special warranty deed. Thereafter, the Homes Association shall cause property and liability insurance to be continuously maintained on the Recreational Area and, so long as the Developer owns any Lots in the Subdivision, cause the Developer to be named as an additional insured on such liability insurance coverage.
  - (b) The Homes Association shall pay (i) all operating expenses (as defined below) and (ii) all post construction capital expenditures (as defined below) relating to the Recreational Area.
  - (c) For purposes hereof, the "operating expenses" of the Recreational Area generally has the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Recreational Area or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, or (iii) any financing or debt service expenses related to the costs described in clause (i) above.
  - (d) For purposes hereof, "post construction capital expenditures" means any expenditures made or incurred after the initial completion (as specified by the Developer) of the Recreational Area for equipment, furniture, or other capital assets, including the expansion, addition or replacement of any equipment or facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied.





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

THIS FIRST AMENDMENT is made and entered into this 24 day of February 2003, for the purposes hereinafter described.

RECITALS:

WHEREAS, on the 13<sup>th</sup> day of December 2001, Falcon Lakes L.L.C., a Kansas corporation ("Developer"), executed a document entitled "Falcon Lakes Homes Association Declaration" (the "Homes Association Declaration") which imposed certain restrictions upon the property composed of Lots 1 through 40 of Falcon Lakes, 1<sup>st</sup> plat, a subdivision of the City of Basehor, Leavenworth County, Kansas (the "Property"). Said Declaration was recorded on February 4, 2002, in Book 0830, Page 1828, of the Leavenworth County, Kansas, records; and

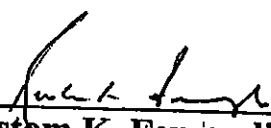
WHEREAS, Developer wishes to add Lots 41 through 98, and Tracts "C" and "D" of Falcon Lakes 2<sup>nd</sup> Plat to the Declaration of Restrictions.

NOW THEREFORE, the parties to this Amendment hereby amend the Declaration of Restrictions to add the following described lots to-wit:

Lots 41 through 98, and Tracts "C" and "D" of Falcon Lakes 2<sup>nd</sup> Plat, a subdivision in the City of Basehor, Leavenworth County, Kansas, according to the recorded plat thereof.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Falcon Lakes Declaration of Restrictions to be duly executed as of the date first above written.

**FALCON LAKES L.L.C., Developer  
A Kansas Limited Liability Company  
By Its Manager, Ferzandi Consulting, Inc**

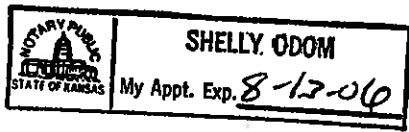
  
\_\_\_\_\_  
**Rustom K. Ferzandi, President**

**ACKNOWLEDGEMENT**

STATE OF KANSAS            }  
  } ss.  
COUNTY OF JOHNSON        }

BE IT REMEMBERED that on this 24 day of February 2003, before me, the undersigned, a Notary Public in and for the County and State aforesaid, Rustom K. Ferzandi, President of Ferzandi Consulting, Inc., who is personally known to me to be the same person who executed the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

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



*Shelly Odom*  
\_\_\_\_\_  
Notary Public

My commission expires: 8-13-06

**FOURTH AMENDMENT TO FALCON LAKES  
HOMES ASSOCIATION DECLARATION**

THIS FOURTH AMENDMENT is made and entered into this 9<sup>th</sup> day of December 2005, for the purposes hereinafter described.

*(Handwritten notes and signature)*  
C/O F  
M 1/2

RECITALS:

WHEREAS, on the 13<sup>th</sup> day of December 2001, Falcon Lakes L.L.C., a Kansas corporation ("Developer"), executed a document entitled "Falcon Lakes Homes Association Declaration" (the "Homes Association Declaration") which imposed certain restrictions upon the property composed of Lots 1 through 40 of Falcon Lakes, 1<sup>st</sup> plat, a subdivision of the City of Basehor, Leavenworth County, Kansas (the "Property"). Said Declaration was recorded on February 4, 2002, in Book 0830, Page 1843, of the Leavenworth County, Kansas, records; and

WHEREAS, Developer wishes to add Lots 99 through 138, and Tracts "E", "F", "G", "H" and "I" of Falcon Lakes 3<sup>rd</sup> Plat to the Homes Association Declarations.

NOW THEREFORE, the parties to this Amendment hereby amend the Homes Association Declaration to add the following described lots to-wit:

Lots 99 through 138, and Tracts "E", "F", "G", "H" and "I" of Falcon Lakes 3<sup>rd</sup> Plat, a subdivision in the City of Basehor, Leavenworth County, Kansas, according to the recorded plat thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Fourth Amendment to Falcon Lakes Homes Association Declaration to be duly executed as of the date first above written.

**FALCON LAKES L.L.C., Developer  
A Kansas Limited Liability Company  
By Its Manager, Ferzandi Consulting, Inc**


*(Handwritten signature)*  
\_\_\_\_\_  
**Rustom K. Ferzandi, President**

**ACKNOWLEDGEMENT**

**STATE OF KANSAS**            }  
  }  
  } **ss.**  
**COUNTY OF JOHNSON**        }

BE IT REMEMBERED that on this 9<sup>th</sup> day of December 2005, before me, the undersigned, a Notary Public in and for the County and State aforesaid, Rustom K. Ferzandi, President of Ferzandi Consulting, Inc., who is personally known to me to be the same person who executed the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

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

  
\_\_\_\_\_  
Notary Public

My commission expires: 8-13-06



STATE OF KANSAS  
COUNTY OF LEAVENWORTH-SS  
FILED FOR RECORD

2006 JUN 26 A 11:36

STACY R. DRISCOLL  
REGISTER OF DEEDS

BK 0987 PG 0307

**THIRD AMENDMENT TO FALCON LAKES  
DECLARATION OF RESTRICTIONS**

THIS THIRD AMENDMENT is made and entered into this day of December 2005, for the purposes hereinafter described.

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M

**RECITALS:**

WHEREAS, on the 13<sup>th</sup> day of December 2001, Falcon Lakes L.L.C., a Kansas corporation (“Developer”), executed a document entitled “Falcon Lakes Declaration of Restrictions” (the “Declaration of Restrictions”) which imposed certain restrictions upon the property composed of Lots 1 through 40 of Falcon Lakes, 1<sup>st</sup> plat, a subdivision of the City of Basehor, Leavenworth County, Kansas (the “Property”). Said Declaration of Restrictions was recorded on February 4, 2002, in Book 0830, Page 1828, of the Leavenworth County, Kansas, records; and

WHEREAS, on the 24 day of February, 2003, Falcon Lakes L.L.C., executed a document entitled “First Amendment to Falcon Lakes Declaration of Restrictions” (the “First Amendment”), which added Lots 41 through 98, and Tracts “C” and “D” of Falcon Lakes 2<sup>nd</sup> Plat to the Declaration of Restrictions. Said Amendment was recorded on March 3, 2003, in Book 0868, Page 0065, of the Leavenworth County, Kansas records; and

WHEREAS, on the 3<sup>rd</sup> day of September, 2003 Falcon Lakes L.L.C., executed a document entitled “Second Amendment to Falcon Lakes Declaration of Restrictions” (the Second Amendment”), which deleted Article XI and replaced it with a corrected Article XI. Said Amendment was recorded on September 8, 2003, in Book 893, Page 760, of the Leavenworth County, Kansas records; and

NOW THEREFORE, the parties to this Amendment hereby amend the Declaration of Restrictions to add the following lots to-wit:

Lots 99 though 138, and Tracts “E”, “F”, “G”, “H” and “I” of Falcon Lakes 3<sup>rd</sup> Plat, a subdivision in the City of Basehor, Leavenworth County, Kansas, according to the recorded plat thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to Falcon Lakes Declaration of Restrictions to be duly executed as of the date first above written.

**FALCON LAKES L.L.C., Developer  
A Kansas Limited Liability Company  
By it's Manager, Ferzandi Consulting, Inc**

  
\_\_\_\_\_  
**Rustom K. Ferzandi, President**

STATE OF KANSAS  
COUNTY OF LEAVENWORTH-SS  
FILED FOR RECORD

2006 JUN 26 A 11: 36 8

STACY R. DRISCOLL  
REGISTER OF DEEDS


**ACKNOWLEDGEMENT**

STATE OF KANSAS            }  
  } ss.  
COUNTY OF JOHNSON        }

BE IT REMEMBERED that on this 9<sup>th</sup> day of December 2005, before me, the undersigned, a Notary Public in and for the County and State aforesaid, Rustom K. Ferzandi, President of Ferzandi Consulting, Inc., Manager of Falcon Lakes L.L.C., who is personally known to me to be the same person who executed the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

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



  
\_\_\_\_\_  
Notary Public

My commission expires: 8-13-06

**FALCON LAKES DECLARATION OF RESTRICTIONS**

Ec 1001  
11/1  
12/1

THIS DECLARATION is made this 13 Day of December, 2001, by: Falcon Lakes L.L.C. ("Developer").

**WITNESSETH:**

**WHEREAS**, Falcon Lakes L.L.C. has executed and filed with the Register of Deeds of Leavenworth County, Kansas, a plat of the subdivision known as "Falcon Lakes" AND

**WHEREAS**, such plat creates the subdivision of Falcon Lakes, composed of the following described lots, to-wit:

All of Lots 1 through 40 and Tracts A and B, FALCON LAKES FIRST PLAT, a subdivision of land in the City of Basehor, Leavenworth County, Kansas, according to the recorded plat thereof.

**ARTICLE I. DEFINITIONS**

For purposes of this Declaration, the following definitions shall apply:

1. The term "Lot" shall mean any lot as shown as a separate lot on any recorded plat of all or part of the District; provided, however, that if an Owner, other than the Developer, owns all or part of one or more adjacent lots upon which only one adjacent property under common ownership shall be deemed to constitute only one "Lot".

2. The term "District" shall mean all of the above described lots in Falcon Lakes, Plat I, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

3. The term "Developer" shall mean and refer to Falcon Lakes L.L.C., a Kansas Corporation and its successors and assigns.

4. The term "Owner" shall mean the record owner in fee simple of any Lot, including the Developer, and for purposes of all obligations of the Owner hereunder, shall include all family members and tenants of such Owner and all of their guests and invitees.

5. The term "Common Areas" shall mean:

a. street rights-of-way;

b. streets and street islands;

c. gateways, entrances, monuments, berms, and other similar ornamental areas and related utilities, street lights, sprinkler systems, and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street and any easement related thereto; and



d. the "Recreational Facilities", including any swimming pool, tennis courts, clubhouse, and all other similar areas and places (other than the Golf Course Property), together with all improvements thereon and thereto for the use, benefit, or enjoyment thereof is intended for all of the Owners within the District whether or not any "Common Area" is located on any Lot.

6. The term "Street" shall mean any public street, road, terrace, circle, or boulevard shown on any recorded plat of all or part of the District.

7. The term "Homes Association" shall mean the Kansas not-for-profit corporation to be formed by the Developer for the purpose of serving as the Homes Association for the District.

8. The term "Exterior Structure" shall mean any structure 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, doghouse or other animal shelter, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, satellite dish, basketball goal, swing set, trampoline, sandbox, playhouse, treehouse, or other recreational or play structure.

9. The term "Golf Course Property" shall mean, collectively, the 18-hole golf course now known as Falcon Lakes Golf Course, located in Basehor, Kansas, and the related lakes, cart path, main clubhouse, parking lot, and other improvements located on land that is not within any platted residential lot.

10. The term "Golf Course Lot" shall mean any Lot which has any portion of its boundary in common with the boundary of the Golf Course Property, as specified by the Developer.

11. The term "Certificate of Substantial Completion" ("Certificate") shall mean a certificate executed, acknowledged, and recorded by the Developer stating that all, or at the Developer's discretion substantially all, of the Lots in the District (as then composed or 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 its discretion at any time and for any limited purpose hereunder.

12. The term "Approving Party" shall mean;

- a. prior to the recording of the Certificate, the Developer (or its designees); and
- b. subsequent to the recording of the Certificate, the Homes Association.

13. The term "Architectural Committee", for purposes of certain Exterior Structures as provided in Section XIV below shall mean:

- a. prior to the recording of the Certificate, the Developer (or its designees); and
- b. on and after the recording of the Certificate, a committee comprised of at least five members of the Homes Association who shall be appointed by the Board in an impartial manner from the Homes Association members who indicate a willingness to serve on the committee.

14. The term "Board" shall mean the Board of Directors of the Homes Association.

## ARTICLE II. USE OF LAND

None of the Lots may be improved, used, or occupied for other than single-family, private residential purposes; and no duplex, flat, or apartment house, although intended for residential purposes, may be erected thereon. **No rental property shall be permitted unless authorized by the Developer.** No residential building which has previously been at another location shall be moved onto any Lot. No "earth" homes shall be permitted. No trailer or outbuilding erected on any Lot shall at any time be used for human habitation; provided, however, that nothing herein shall prevent the Developer or other entity (including, without limitation, builders and real estate sales agencies) authorized by the Developer from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales, or storage purposes during the development of the District.

## ARTICLE III. BUILDING MATERIAL REQUIREMENTS

Exterior walls of all residences and all appurtenances thereto shall be of stucco, brick, stone, lap siding, wood siding, or any combination thereof, or such other materials as may be deemed by the Developer in writing to be compatible therewith. **The architectural treatment and materials on the front of the house shall be continuous from the one front corner to the other, including all intervening side returning walls.** All windows shall be constructed of glass, wood, metal clad, vinyl clad and wood laminate, or any combination thereof; provided, however, that storm windows may be constructed of colored metal (other than silver). All exterior doors and louvers shall be functional. The composition of roof construction of any residence or outbuilding with a pitch (slope) of 5/12 or greater shall have an exterior covering of a minimum of 40 year composition, (with prior written approval by Developer), slate, or tile. Flat roofs or roofs with a pitch of less than five inches per foot shall be covered with standing seam metal, built-up asphalt, single-ply roofs, or slate. Any building products that may come into general usage for dwelling construction of comparable quality and style in the area after the date hereof shall be acceptable if approved in writing by the Developer. All wood exteriors shall be covered with a workmanlike finish of two coats of high quality paint or stain. All paint color selections must be submitted to Developer at time of plan approval. If colors have not been selected prior to construction, Developer must approve paint colors in writing prior to application. All exterior fireplaces shall be of MASONRY construction and supported by a full foundation. All fireplace caps shall be low profile. The Developer shall have final approval of all exterior design and material selections for fireplaces and chimneys. No building shall be permitted to stand with its exterior in any unfinished condition for longer than five (5) months after commencement of construction. All exterior basement foundations and walls that are exposed above final grade shall have a maximum exposure of concrete not exceeding six inches on the front and 12 inches on the side or covered with siding compatible with the structure. No "earth" homes shall be permitted, and board and batt siding shall be prohibited. No driveway shall be constructed in such a manner as to permit access to a street across a rear lot line.

## ARTICLE IV. MINIMUM FLOOR AREA

No residence shall be constructed upon any Lot in the District unless it has a total finished floor area of not less than 1,700 square feet on the first floor for a one story or a

reverse story and one-half residence, a minimum finished floor area of not less than 1,050 square feet on the first floor for a 2 story residence, and at least 1,250 square feet on the first floor for a one and one-half story residence.

The Developer, in its discretion, may allow variances under the foregoing minimum square footage requirement and may require more square feet where the Developer deems appropriate. All floor areas shall be determined exclusive of any porches, garages, alcoves, attics, and basement areas, whether finished or unfinished.

#### **ARTICLE V. APPROVAL OF PLANS AND POST-CONSTRUCTION CHANGES**

1. Notwithstanding compliance with the provisions of Articles III and IV above, no residence or Exterior Structure may have a City permit issued or be erected upon or moved onto any Lot unless and until the building plans, specifications, material, location, front and rear elevations, lot grading plans, general landscaping plans, and exterior color scheme have been submitted to and approved in writing by the Developer, or in the case of Exterior Structures as provided in Article VIII below, the Architectural Committee. Nor shall any change or alteration in such building plans, specifications, materials, location, elevation, grading plans landscaping plans, or exterior color scheme thereof be made 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. All building plans and plot plans shall be designed to minimize the removal of existing trees, shall designate those trees to be removed, and shall protect those trees that are to remain. The plot plan shall include current and future grade elevation and changes. All grades must return to the original grade as set forth by the Pre-Construction Plot Plan. Exceptions can be made, subject to compatibility with grades on adjacent lots, when approved by Architectural Committee. The top of foundation elevation and erosion control must be included on the plot plan to be submitted for plan approval. Three sets of plans including all four sides' elevation, all materials to be used, and all colors with an attached, above-mentioned Pre-Construction Plot Plan, including all requirements, are to be submitted prior to commencing construction.

2. Following the completion of construction of any residence or Exterior Structure, no exterior colors and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Approving Party or the Architectural Committee, as the case may be. All replacements of all or any portions of a structure because of age, casualty loss, or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure unless the changes have been submitted to and approved in writing by the Approving Party.

3. No changes in the final grading of any Lot shall be made without the written approval of the Approving Party or, in the case of a Golf Course Lot, the Developer.

#### **ARTICLE VI. SETBACKS**

No building, exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys, and other similar projections shall be closer to any street than the building setback lines, if any, shown on the recorded plat.

All golf course lots shall be subject to a rear yard setback of 35 feet measured parallel to the rear property line.

## **ARTICLE VII. COMMENCEMENT AND COMPLETION OF CONSTRUCTION**

Unless the following time periods are expressly extended by the Developer in writing, construction of the residential **building on a Lot in Phase (shall be commenced within 30 days** following the date of delivery of a deed from the Developer to the purchaser of such Lot and shall be **completed within 180 days after such commencement.** In the event such construction is not commenced within such designated period (or extension thereof), the Developer shall have, prior to commencement of construction, the right to repurchase such Lot from such purchaser at its original sale price. No Owner of a Lot in violation of this construction commencement provision shall be entitled to reimbursement for taxes, interest, or other expenses paid or incurred by or for such Owner.

## **ARTICLE VIII. EXTERIOR STRUCTURES**

No **Exterior Structure** shall be erected upon, moved onto, or maintained upon any Lot except with and pursuant to the advance written approval of the Architectural Committee, and forth in subsection (2) below; provided, however, that the approval of the Architectural Committee shall not be required for any Exterior Structure erected by or at the request of the Developer or any Exterior Structure that 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 has been built in accordance with such approved plans.

1. No **fences** shall be allowed in Falcon Lakes except those in compliance with the following requirements;
  - a. no fences shall be permitted on any property line of golf course lots. Fences required around swimming pools shall be of wrought iron, five foot high maximum, meet codes of the city of Basehor and shall not extend more than two feet beyond the perimeter of the surrounding deck nor encroach on any side or rear setback line. Landscaping of pool enclosure fences is required and shall be approved by the Architectural Committee.
  - b. fencing on all other lots shall be restricted to wrought iron of an approved design and five feet in height. Such fencing shall not extend closer to the front of the lot than the rear corners of the residence.
  - c. privacy fencing adjacent to patio areas shall be permitted subject to the approval of the Architectural Committee. In no event shall such privacy fencing extend beyond the side or rear setback lines of the residence.
2. All **basketball goals** shall be free-standing and not attached to the residence unless the Architectural Committee or Developer determines that there are compelling reasons for the basketball goal to be attached to the residence. All basketball goals shall be consistent with the

standard designs and materials be selected by the Architectural Committee which shall have the right to establish reasonable rules regarding the location and the hours of use of basketball goals, and any such rules shall be binding upon all of the Lots.

3. All recreational or play structures (other than basketball goals) shall be located behind the back building line of the residence. On golf course lots, no play structures shall be located within the required rear setback area.

4. No above ground swimming pools shall be permitted. All pools and hot tubs shall be fenced or otherwise adequately screened. All pools and hot tubs shall be kept clean and maintained in operable condition. On golf course lots, no pool or surrounding deck or patio shall be permitted to encroach in the required rear setback area.

5. All outside doghouses and other animal shelters shall be up against or within two feet of the residence, shall be painted (where appropriate) the same color as the residence, and shall have roofs (where appropriate) that are compatible with the residence.

6. No Exterior Structure that is prohibited under Article IX below shall be permitted under this Article VIII.

7. All driveways shall be paved with concrete or paver blocks. No asphalt shall be permitted.

#### **ARTICLE IX. BUILDINGS FOR USES OTHER THAN FOR RESIDENTIAL PURPOSES; NOXIOUS ACTIVITIES; MISCELLANEOUS**

1. Except as otherwise provided in Article II above, no residence or Exterior Structure 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 from maintaining an office area in his residence in accordance with the applicable ordinances of the City of Basehor, Kansas.

2. No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any trash, ashes, or other refuse be thrown, placed, or dumped upon any Lot or Common Area or the Golf Course Property, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood. Each Owner shall properly maintain his Lot in a neat, clean, and orderly fashion. All residences and Exterior Structures shall be kept and maintained in good condition and repair at all times.

3. No vehicle, trailer, bus, van, camper, boat, or similar apparatus shall be parked, left, maintained, repaired, serviced, or stored on any Lot or in any yard. No truck or commercial vehicle shall be parked, left, or stored on any driveway or street for more than an eight-hour period. No trailer, bus, van, camper, boat, or similar apparatus shall be parked, left, or stored in any driveway or street for more than a 24-hour period. It is the intent of the parties hereto that all automobiles shall be kept in an enclosed garage whenever possible. Motorized vehicles shall not be operated on any Lot or Common Area, other than in the street.

4. No television, radio, citizen's band, short wave or other antenna, satellite dish, solar panel, clothesline or pole, or other unsightly projection shall be attached to the exterior of any residence or erected in any yard. Satellite dishes up to 18 inches in diameter may be permitted with

the location to be approved by the Architectural Committee. Should a part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution, the Architectural Committee 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 neighborhood, and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the residence.

5. All garage doors shall remain closed at all times except when necessary for entry or exit.
6. No garage sales, sample sales, or similar activities shall be held within the District without the written consent of the Approving Party.
7. No mailbox or standard therefor shall be erected or installed without the prior approval of style, material, construction, and location being granted by the Approving Party. The Developer shall provide per United States Post Office requirements.
8. No speaker, horn, whistle, siren, bell, or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed, or maintained upon the exterior of any residence or in any yard.
9. All residential service utilities shall be underground.
10. In the event of vandalism, fire, windstorm, or other damage, no buildings shall be permitted to remain in damaged condition for longer than three months.
11. No shed, barn, detached garage, or other storage facility shall be erected upon, moved into, or maintained upon any yard.
12. No fuel storage tanks of any kind shall be permitted.
13. No driveway shall be constructed in a manner as to permit access to a street across a rear lot line.
14. The Owner of each Golf Course Lot, at all times and at the Owner's expense, shall provide adequate erosion control to protect the Golf Course Property from sediment from the Lot and, to the extent not assumed by the Developer or the Homes Association, or for the Developer on such Lot as contemplated in Article VIII (1) above.
15. **The Developer has the right to allow variances of all requirements contained herein.**

#### **ARTICLE X. ANIMALS**

No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except that dogs, cats, and other common household pets may be kept so long as they are not kept, bred, or maintained for commercial purposes and do not constitute a nuisance to the neighbors or neighborhood. In no event, however, shall more than three dogs or cats, or combination thereof, be raised, kept, or maintained on any Lot.

## **ARTICLE XI. LANDSCAPING AND LAWNS**

Prior to occupancy, and in all events within three months after completion of construction, all lawns, including all areas between each residential building 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 Developer. Prior to occupancy, and in all events within nine months following commencement of construction of the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the District and in accordance with the plans approved by the Developer. All vegetable gardens shall be located in the back yard. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four inches and shall properly maintain and replace all trees and landscaping.

Buyer acknowledges that all of the \$1,500 landscaping allowance must, in fact, be spent for landscaping in front of the home. Buyer must install 2 trees in front of the residence, in addition to the landscaping. None of this amount shall be applied to sod or irrigation systems. Credits of any nature will not be permitted with respect to the allowance. Buyer must submit to Developer its own landscaping plan, which will be subject to the Developer's sole and absolute discretion for approval. Should the plan submitted by Buyer be approved by Developer, then weather permitting, all landscaping shall be completed prior to closing. Should weather not permit, Title company shall hold all of the allowance until the work is completed by a landscape company or buyer has provided the listing agent with copies of paid invoices totaling not less than \$1,500. In any event, the allowance shall only be released when the landscaping is actually installed.

## **ARTICLE XII. EASEMENTS FOR PUBLIC UTILITIES; DRAINAGE; MAINTENANCE**

The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize 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 mains and lines, electric and telephone lines 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 shown on the recorded plat of the District or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies for purposes of installing, maintaining, or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners in the District, and the Homes Association as a cross easement for utility line or service maintenance

The Developer shall have and does hereby reserve for itself, its successors, and assigns and the Homes Association and its successors and assigns:

1. an easement over and through all unimproved portions of each Lot in the District for the purpose of performing the duties of the Homes Association and maintaining any Common Areas; and
2. an easement along the boundary of each Golf Course Lot in common with the Golf Course Property to erect and, at their option, to maintain, repair, and replace the fence contemplated in Article VIII (1) (a) above.

No water from any roof, downspout, basement, or garage drain or surface drainage shall be

placed in or connected to any secondary sewer line; nor shall any other connection of any kind be made to a sewer line without the prior written approval of the Developer.

### **ARTICLE XIII. COMMON AREAS**

1. The Developer and its successors, assigns, and grantees, as Owners of Lots in the District, shall have the right only for the intended use. Such right and easement shall be appurtenant to and shall automatically pass with the title to each Lot and shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto.
2. The Developer agrees to convey all of its rights, title, and interest in the Common Areas (other than any recreational facilities, the conveyance of which is addressed in the Falcon Lakes Homes Association Declaration) to the Homes Association without any cost to the Homes Association not later than one month after the Developer has recorded the Certificate.
3. The ownership by the Homes Association of any Common Area and the right and easement of enjoyment of the Owners in the District as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon, and through such Common Area as provided in Article XII above.
4. No owner shall improve, destroy, or otherwise alter any Common Area without the express written consent of the Approving Party.
5. Any gates or similar security facilities that may be installed as or in a Common Area, other than public streets, shall be constructed and operated in a manner so as to permit access at all times by emergency vehicles.
6. The Developer and the Homes Association shall have the right to make additional rules, regulations, and restrictions pertaining to the use of any Common Area.

### **ARTICLE XIV. ARCHITECTURAL COMMITTEE**

1. If possible, no more than two Architectural Committee members shall be from any one particular plat located within the subdivision of Falcon Lakes, and no more than two members of the Board shall serve on the Architectural Committee at any time. The positions on the Architectural Committee shall be divided into two classes with staggered two-year terms. No committee member shall serve for more than two consecutive terms (a full term being defined as 18 or more months). The foregoing provisions shall not apply until after December 31, 2001.
2. The Architectural Committee shall meet at least once each calendar month to consider applications with respect to any Exterior Structures that require the approval of the Architectural Committee as provided in Article VIII above. Any application that is not acted upon by the Architectural Committee within 45 days of the date on which it is filed shall be deemed to have been approved. 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 which a quorum is present shall be regarded as the act or decision of the Architectural Committee.



3. At each meeting, the Architectural Committee shall consider and act upon applications that have been submitted to it decisions, the Architectural Committee may consider any and all aspects and factors that the committee members, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character, and aesthetics of the surrounding neighborhood, including, without limitation, the plans, specifications, exterior colors, material, location, elevation, landscaping, and use of the 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 guidelines and conditions that it intends to follow in making its decisions.

4. Any applicant who is dissatisfied with the decisions 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 15 days of the date the Architectural Committee renders its decision. Any decision rendered by the Board on appeal shall be final and conclusively binding on the applicant.

5. Neither the Architectural Committee nor its individual members make any warranties by their approval of any plans. The role of the Committee and its members is to verify that the plans meet the specification and aesthetic requirements of these Restrictions. The approval of plans is not an opinion or warranty of the structural integrity, quality, or value of the proposed residence.

#### **ARTICLE XV. NO LIABILITY FOR APPROVAL OR DISAPPROVAL**

Neither the Developer nor the Homes Association nor any member of the Architectural Committee nor the Board shall be personally liable to any person for any discretionary approval, disapproval, or failure to approve any matter submitted for approval, for the adoption of any rules, regulations, or guidelines, or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration.

The Developer has the right to allow variances of all requirements contained in this Declaration of Restrictions.

#### **ARTICLE XVI. GENERAL EASEMENT AND RELEASE REGARDING GOLF COURSE PROPERTY**

##### **1. Reservation of Golf Ball Easement.**

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

2. Character of Easement.

The Easement shall be appurtenant to the Golf Club and the Golf Club shall be the dominant tenement, and each and every legal parcel or lot in the Servient Lots shall be the servient tenement.

3. Use of Easement

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

(b) Limited Use. The Easement shall be specifically limited to use by each owner and operator of the Golf Club 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.

4. Term.

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

5. Waiver and Indemnification.

Each Owner, owner(s), operator(s) and designer(s) of the Golf Club, 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 (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 Servient 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.

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, "Claims") arising from or related in any way whatsoever to (a) any use of the Easement over, above, across or in such Owner's Servient Lot, whether the Claim (s) is 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 Servient Lot provided the Claim(s) is 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 Servient Lots for the benefit of the Golf Club

and shall be binding on all successive owners of any portion of the Servient Lots. Notwithstanding anything to the contrary herein, (i) nothing contained in this paragraph shall operate to relieve any Party for any Claim which is 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 (ii) the waiver and indemnification provisions of this paragraph 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.

When more than one person is the Owner of any Servient Lot, such persons shall be jointly and severally liable hereunder as the Owner of said Servient Lot. The term "Owner" shall not, in any event, include any person holding an interest in a Servient Lot merely as security for the Performance of an obligation.

6. Buffers.

Without limiting the generality of the foregoing paragraphs of this declaration, each Owner understands and agrees that the Company and the owner(s), operator(s) and designer(s) of the Golf Club cannot install fences, trees and other buffers, or reconfigure or remodel the Golf Club, 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 Club. The owner(s) and Operator(s) of the Golf Club may install fences, trees and other improvements on the Golf Club and remodel the Golf Club as and when they so desire.

7. Preferences.

Subject to the terms and conditions set forth below, Owners of the Servient Lots shall be granted preferential golf tee times ("Preference") by the owners and operators of the Golf Club ("Operator"); and with respect to other golf club rules and regulations implemented, the Owners shall not be treated less beneficially than members of the general public who are not owners; provided, however, that while the extent, terms and conditions of the Preference to time, the Preference at a minimum shall afford to the Owners tee time reservation preference of at least 72 hours prior to that of the general public (for example, if the public may reserve tee times five days in advance, Owners may reserve tee times eight days in advance); provided, further, however, that the Preference shall terminate December 31 2021, unless in the Operator's sole discretion, the Preference is extended for an additional specified term. All other provisions of the Easement do not expire or lapse upon the expiration of the Preference, and they shall remain in full force and effect.

8. Miscellaneous.

(a) Successors and Assigns. The provisions of this Declaration shall bind all parties now having or hereafter obtaining any beneficial interest in the Servient Lots, and their heirs, executors, successors and assigns, and shall inure to the benefit of all of the Parties and all parties now having or hereafter obtaining any beneficial interest in the Golf Club, and their successors and assigns.

(b) No Rights in Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Servient Lots to or for the general public or for the general public or for any public purpose whatsoever, it being the intention of the undersigned that the Easement shall

be strictly limited to and for the purposes herein expressed.

(c) Attorneys' Fees. In the event of any controversy, claim, action, dispute or proceeding, including any arbitration proceeding, relating to this Declaration, or the breach hereof, then the unsuccessful party in such action or proceeding shall reimburse the successful party herein for all costs and expenses (including costs, expenses and actual attorneys' fees) incurred therein by such successful party.

#### **ARTICLE XVII. COVENANTS RUNNING WITH THE LAND; ENFORCEMENT**

The agreements, restrictions, and reservations herein set forth are and shall be covenants running with the land into whosoever hands any of the property in the District shall come. The Developer, its successors and assigns, and grantees and all parties claiming by, through, or under them shall conform to and observe such agreements, restrictions, and reservations; provided, however, that no person shall be obligated to enforce any such agreements, restrictions, and reservations. No agreement, restriction, or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during its or his seizing of title to such Lots; provided, however, that the immediate grantee from the builder of the residence on a Lot shall be personally responsible for breaches committed during such builder's ownership of such Lot.

The Developer, its successors and assigns, and all other Owners of any of the Lots and Homes Association 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, and reservations herein set forth in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions, or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

#### **ARTICLE XVIII. ASSIGNMENT OF DEVELOPMENT RIGHTS**

The Developer shall have the right to assign and set over 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 hereunder.

#### **ARTICLE XIX. SECURITY**

Neither the Homes Association, the Developer, nor any successor thereof shall in any way be considered insurers or guarantors of security within the Falcon Lakes properties. The Homes Association, the Developer and all successors thereof do not represent or warrant that any fire protection system, burglar alarm system or other security system designated by or installed according to guidelines established by the Homes Association, the Developer or any successor thereof may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise. Each Owner, guest, and invitee of any Owner assumes all risks for loss or damage to persons, to Unit and to the contents

of said Unit.

## **ARTICLE XX. RELEASE OR MODIFICATION OF RESTRICTIONS**

The provisions of this Declaration shall remain in full force and effect until July 1, 2020, and shall automatically be continued thereafter for successive periods of five years each; provided, however, that the then Owners of a majority of the Lots may release the District, or any part thereof, from all or part of such provisions as of July 1, 2020, or at the expiration of any extension period, by executing (in one or more counterparts), acknowledging, and recording an appropriate agreement in writing for such purpose at least one year prior to the original expiration date or to a subsequent expiration date, whichever is applicable. 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 the Owners (excluding therein the Developer if it is then an Owner) of a majority of the Lots (excluding those owned by the Developer) and the Developer or its successors and assigns.

## **ARTICLE XXI. EXTENSION OF DISTRICT**

The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to the Golf Course Property and streets) lands as it may now own or hereafter acquire by executing, acknowledging, and recording an appropriate written declaration or agreement subjecting such land to all or 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 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 good faith.

## **ARTICLE XXII. 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 any part thereof, but they shall remain in full force and effect.

