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**AMENDED AND RESTATED WHITETAIL HOMES ASSOCIATION, INC.  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND ASSESSMENTS**

When recorded return to:  
Ferree, Bunn & Ridgway, Chtd.  
9393 W. 110<sup>th</sup> Street, Suite 200  
Overland Park, Kansas 66210

**AMENDED AND RESTATED WHITETAIL HOMES ASSOCIATION, INC.  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
EASEMENTS AND ASSESSMENTS**

THIS AMENDMENT is made this 5 day of September, 2019 by the undersigned parties.

WHEREAS, Kansas Empire Return, LLC ("Developer") caused a certain Declaration of Covenants, Conditions, Restricts, Easements and Assessments (the "Declaration") to be filed in the Register of Deeds Office of Johnson County, Kansas as Document T20110070328, in Book 201112, at Page 009467; and

WHEREAS, the Developer and Rausch Coleman Whitetail, LLC ("Rausch") caused an Amendment to the Declaration to be filed in the Register of Deeds Office of Johnson County, Kansas as Document T20120092176, in Book 201212, at Page 006395, thereby amending certain provisions of the Declaration; and

WHEREAS, the Developer and/or its assignee has relinquished its rights under the Declaration to Whitetail Homes Association, Inc. (the "Association"), a Kansas not for profit corporation; and

WHEREAS, the undersigned parties, representing more than a two-thirds (2/3) majority of the owners of property subject to it, desire to amend said Declaration, by consent; and

WHEREAS, the real property ("Subdivision Property") subjected to said above-mentioned documents and bound by this Amended and Restated Declaration is set forth on Exhibit "A" attached hereto.

NOW, THEREFORE, in consideration of the benefits to be derived from said amendments and by virtue of the right of a two-thirds (2/3) majority of owners to amend said document by consent, the same are hereby amended in total as follows:

**SECTION 1.  
DEFINITION OF TERMS USED**

For purposes of this Declaration, the following words and phrases shall have the following meanings:

1. The term "Architectural Control Committee" or "ACC", shall mean:
  - a) prior to the recording of the Certificate, the Developer (or is designees); and
  - b) on and after the recording of the Certificate, a committee comprised of at least three members of the Homes Association who shall be appointed by

the Board of the Homes Association in an impartial manner from the members of the Homes Association who indicate a willingness to serve on the committee.

2. The term “**Association**” or “**Homes Association**” shall mean Whitetail Homes Association, Inc., a not for profit corporation formed for the purpose of taking the fee simple title to the Common Areas, assuming the obligations of maintaining and operating Common Area in accordance with the provisions hereof, of carrying out the various duties and obligations otherwise provided for herein and to exercise the powers provided for herein and under the laws of the State of Kansas.

3. The term “**Board**” shall mean the Board of Directors of the Homes Association after the end of the Period of Developer Control. The Board shall consist of at least three (3) members.

4. The term “**Certificate of Substantial Completion**” (“**Certificate**”) shall mean a certificate executed, acknowledged, and recorded by the Developer stating that all of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and that the period of Developer Control has ended, 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 purpose hereunder.

5. The term “**Common Area**” or “**Private Open Space**” shall mean and refer to the Tracts and such land, if any, as may be designated as such on the Plat of the Subdivision, or which may hereafter be designated as such on subsequent plats of the Subdivision or which may be created by separate document filed for that purpose with the Register of Deeds of Johnson County, Kansas. Common Area also includes: (i) any entrances, monuments or monuments signs, street islands and other similar ornamental areas and related utilities, lights and landscaping constructed or installed by or for the Developer at or near the entrance of any Street or along any Street in the Subdivision; (ii) any platted landscape easements that may be granted pursuant to Plat of the Subdivision; and (iii) any walking trails, park areas or common amenities designated on the Plat of the Subdivision or as otherwise developed and constructed by the Developer.

6. The term “**Corner Lot**” shall be deemed to be any Lot as platted, or any parcel of land as conveyed, having more than one street contiguous to it.

7. The term “**Declaration**” shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements and Assessments.

8. The term “**Developer**” shall mean Kansas Empire Return, LLC, a Missouri Limited Liability Company and its successors and assigns.

9. The term “**Enclosed Floor Area**” shall mean and include, in all cases, areas on the first and second floor of the residence enclosed and finished for all-year occupancy,

computed on outside measurements of the residence and shall not mean or include any areas in basements, garages, porches, or attics; provided, however, that certain interior areas need not be immediately finished for occupancy if the residence is so designed and built that such areas can be finished at a later date without any structural changes being made in the exterior of the residence. Provided, however, with respect to a reverse story and a half floorplan, area in a finished basement shall be deemed to be included in the "Enclosed Floor Area," provided the plan is approved by the Architectural Control Committee.

10. 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, shed, patio, stairway, fountain, sculptures, statuary or similar yard decor, ornamental pond or other water-based landscape feature, flag pole, mailbox, gazebo, greenhouse, doghouse or other animal shelter, Outbuilding, fence, privacy screen, boundary, wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, cabana, pool house, hot tub, satellite dish, basketball goal, swing set, jungle gym, trampoline, sandbox, playhouse, tree house, or other recreational or play structure.

11. The term "**Front Street**" shall mean the Street upon which any Lot or part thereof fronts. If a Lot is a Corner Lot, the Front Street shall mean the Street with which the Corner Lot has the longest boundary.

12. The term "**Lot**" means any Lot as platted on the Plat of the Subdivision and upon which a residence may be erected in accordance with the Declaration hereinafter set forth, or as set forth in the individual deeds from the Developer, or from its successors and assigns concerning such Lot. If any Owner, other than the Developer, owns adjacent Lots (or parts thereof) upon which only one residence has been or is being built then for all purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot."

13. The term "**Outbuilding**" shall mean an enclosed, covered structure upon a Lot, separate from and not directly attached or only minimally attached to the single-family residence constructed upon that same Lot.

14. The term "**Owner**" shall mean and refer to the record owner of fee simple title to any Lot or Tract.

15. The term "**Restrictions**" shall mean and refer to the rights, reservations and limitations as to use of the Lots and Tracts within the Subdivision as expressed herein, or as may be modified by amendments or additions thereto.

16. The term "**Side Street**" shall mean any Street other than a Front Street contiguous to any such Lot.

17. The term “**Street**” shall mean any public street, road, drive or avenue of whatever name, as shown on said First Plat or Third Plat of Whitetail, a subdivision in the City of Olathe, Johnson County, Kansas.

18. The term “**Subdivision**” or “**Subdivision Property**” shall mean those Lots and Tracts which are subject to this Declaration.

19. The term “**Tract**” shall mean any parcel within the Subdivision which is designated in said Plat or by separate document as other than a Lot, and which may, by said Plat or document or this Declaration, be further designated as “Common Area”.

## **SECTION 2. PERSONS BOUND BY THIS DECLARATION, INCORPORATION OF PLAT AND ADDITIONAL PROPERTY**

All persons, corporations or other entities who now own or shall hereafter acquire any interest in the above described Lots and Tracts hereby restricted shall be taken to hold and agree and covenant with the other Owners of said Lots and Tracts, and with their successors and assigns, to conform to and observe the following covenants, restrictions and stipulations as to the use thereof and the construction of residences and improvements thereon for a period of time ending on December 31, 2051 however, that this Declaration shall be renewable in the manner hereinafter set forth.

**Incorporation of Plat.** Whitetail 1st Plat and Whitetail 3rd Plat (the “Plats”) dedicate for use, subject to the limitations set forth therein, certain streets, rights-of-way, and easements shown thereon, and such Plats further establish certain dedications, limitations, reservations, and restrictions applicable to the Subdivision. All dedications, limitations, restrictions, easements, rights-of-way and reservations shown on the Plats and any Plats filed hereafter, to the extent they apply to the Subdivision, are incorporated herein and made a part hereof as if set forth fully herein, and shall be construed as being adopted in each contract, deed and conveyance executed or to be executed by or on behalf of Declarant, conveying each Lot in the Property.

## **SECTION 3. USE OF LAND**

None of the Lots hereby restricted may be improved, used or occupied for other than private single-family residential purposes; and no duplex, flat or apartment house, or multi-family residence, although intended for residential purposes, may be erected thereon. Any residence erected or maintained on any of the Lots hereby restricted shall be designed for occupancy by a single family. No residential building which has previously been at another location shall be moved onto any Lot. No “earth” homes shall be permitted. No Outbuilding or Exterior Structure shall be erected for use in a business and no business of any nature may be operated or conducted on the Lots herein restricted, nor shall anything be done thereon which may be or become a nuisance to the Subdivision, provided always, however, that the Developer reserves the right, for so long as the Developer owns any Lot or Tract within the Subdivision, to

maintain a residential real estate sales office upon any of the Lots or Tracts for the purpose of promoting, advertising for sale, showing and selling Lots or Tracts, either improved or unimproved, within Subdivision. 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 Tracts; provided, however, that nothing herein shall prevent the Developer or other (including, without limitation, builders and real estate brokerage companies authorized by the Developer) from using trailers, temporary buildings or structures, or any residence for model, office, sales or storage purposes until the last Lot in the Subdivision is sold and the last residence is constructed in the Subdivision. Except as permitted herein, only one single family residence (including the attached garage) may be constructed on any one Lot.

#### **SECTION 4. HEIGHT RESTRICTIONS ON RESIDENCES**

Any residence erected on any of the Lots hereby restricted shall not be more than two and one-half (2 1/2) stories (including a walkout basement if applicable) in height, provided, however, that a residence more than two and one-half (2 1/2) stories in height may be erected thereon with the consent in writing of the Architectural Control Committee.

#### **SECTION 5. FRONTAGE OF RESIDENCES ON STREETS**

1. Frontage. Any residence erected wholly or partially on any Corner Lot, or any part or parts thereof, shall front or present a good frontage on the Street or Streets designated by the Developer. The Developer may designate the Front Street in its deed to said Lot.

2. Exceptions. It is provided however, that if any part less than the whole of any Corner Lot is so acquired such that the portion acquired only fronts on one Street, the provisions hereof requiring a residence erected on a Corner Lot to front or present a good frontage on the Street or Streets designated by the Developer, shall not be operative, but the part of the Corner Lot so acquired shall be deemed to be a part of the inside Lot to which it is contiguous, as to the restrictions governing the frontage of the residence of the Street, and said part of any Corner Lot so acquired shall be subject to the restrictions applicable to the inside Lot.

#### **SECTION 6. SETBACK OF RESIDENCES FROM STREET**

1. Setbacks. No part of any residence or fence, except as hereinafter provided, may be erected or maintained on any of the Lots hereby restricted, nearer to the Front Street or the Side Street than is the front building or the side building line shown on said Plats of the Subdivision, if any, provided, however that the Developer shall have, and does hereby reserve the right in the sale and conveyance of any of said Lots, to change any building line shown thereon upon compliance with the requirements of the City of Olathe, Kansas, and may at any time with the consent in writing of the then record Owners of the fee simple title to any such Lot,

change any such building line which is shown on said Plats of any such Lot or Lots, or which may in such sale and conveyance be established by it; provided, however, that no fences or walls more than two (2) feet high may be erected nearer the Front Street than the front building line of the house as erected, nor nearer the Side Street than the nearest building line of the residence as erected. Reference is made herein to the building lines for the purpose of determining the location of any residence with reference to the adjoining Street. In case of the relocation of any of said Street, changes may be made in any of said building lines provided that such building lines shall in no way be established nearer to the new location of any of said Streets than are the building lines on said plat with reference to the present location of said Street. The Developer shall have the same privilege of changing the location of any such new building lines so established as it has in the case of those shown on said Plats, upon compliance with the requirements of the City of Olathe, Kansas.

2. Projections. Those parts of the residence which may project to the front of and be nearer to the lot line than the building setback lines shown on said plats or as applied by the City of Olathe, Kansas, and the distance which each may project are as follows:

- a) Window Projections: Bay, bow, or oriel, dormer and other projecting windows may project beyond the front building lines and the side building lines not to exceed three (3) feet, or such lesser amount as may be specified by the Ordinances of the City of Olathe, Kansas.
- b) Miscellaneous Projections: Cornices, spouts, chimneys, brackets, pilasters, grillwork, trellises and other similar projections, and any other projections for purely ornamental purposes, may project beyond the front building lines and side building lines not to exceed three (3) feet, or such lesser amount as may be specified by the Ordinances of the City of Olathe, Kansas.
- c) Vestibule Projections: Any vestibule not more than one (1) story in height may project beyond the front building lines and the side building lines not to exceed four (4) feet, or such lesser amount as may be specified by the Ordinances of the City of Olathe, Kansas.
- d) Cantilever Projections: Upper stories on any residence may not project beyond the building lines.

## **SECTION 7. REQUIRED SIZE OF RESIDENCE**

1. Minimum Sizes. Unless approved by variance granted by the Architectural Control Committee, any residence located on any Lot in the Subdivision shall contain a minimum of 1,300 square feet of "Enclosed Floor Area" on the first floor, if it is a one story residence. In the event the residence has "Enclosed Floor Area" on more than one floor, there shall be a minimum of 750 square feet on the first floor with a minimum total of 1,300 square feet of "Enclosed Floor Area" for the residence.

2. Two Car Garage Required. Any residence erected on any Lot in the Subdivision shall have a minimum of a two car garage, unless approved by variance by the Architectural Control Committee. All sidewalks and driveways shall be constructed of poured concrete, patterned concrete, interlocking pavers, brick or other permanent stone finishes and shall be at least twelve (12) feet wide unless otherwise approved by the Architectural Control Committee. The edge of a driveway may not be closer than six (6) feet to a Lot boundary line (other than the Lot boundary where the driveway intersects with a Street). No carports are permitted. Crushed gravel, asphalt and "natural" driveways and sidewalks are prohibited.

3. Prohibited Styles. "The Developer, the Architectural Control Committee or the Homes Association, whichever may be the case, shall not be liable for any discretionary approval, disapproval or failure to approve any matter submitted for its approval as required by the provisions of this Declaration. The Architectural Control Committee reserves the absolute and incontestable right to determine whether special Lot conditions limiting construction style exist, and whether any bi-level residence violates the meaning of this provision and further whether the Enclosed Floor Area of any bi-level residence (as distinguished from traditional one and one-half (1 1/2) or two (2) story residences) meets the minimum requirements provided for hereunder, and such determination shall be final. The Architectural Control Committee hereby also reserves the right to reduce any of the Enclosed Floor Area requirements set forth above. Unless the Owner obtains the consent of the Architectural Control Committee, no residential building shall have a garage entrance in the basement.

## **SECTION 8. FREE SPACE REQUIRED**

The main body of any residence, including attached garages, attached greenhouses, and porches, patios or decks, enclosed or unenclosed, covered or uncovered, but exclusive of all other projections set forth in Section 6, erected or maintained on any of the Lots hereby restricted or on any part or parts thereof, as shown on the aforesaid plat, shall not occupy more than eighty five percent (85%) of the width of the Lot on which it is erected, measured in each case on the front building line as shown on the aforesaid plat, and shall meet all requirements that may exist by virtue of ordinances enacted by the City of Olathe, Kansas or by virtue of regulations of uniformity established by the Developer. The Architectural Control Committee in its discretion may grant a variance from the eighty-five percent (85%) requirement.

## **SECTION 9. RIGHT TO APPROVE PLANS**

1. Architectural Control Committee or ACC. No building shall be erected, placed or its exterior altered on any Lot in this Subdivision until the building plans, specifications and plot plan showing the location of such building have been approved in writing as to conformity and harmony of external design with existing structures in the Subdivision, and as to location of the building with respect to topography and finished ground elevation by the Architectural Control Committee. The Developer shall act as the Architectural Control Committee during the period of



Developer Control. Any buildings or residences constructed on any Lot prior to the date of recording of these Restrictions are deemed approved.

2. Request for Approval. Upon any such request for approval, the party requesting such approval shall submit simultaneously with said request three (3) copies of each of the following documentation.

- a) Exterior elevations delineating front elevation, back elevation and both side elevations, with adequate detail on exterior flues and decks.
- b) Site plan of the residence as it will sit on the Lot; including porches, decks, patios and any proposed Exterior Structures.
- c) All floor plan(s), including a foundation plan.
- d) A list of all exterior materials to be used which will include roof, masonry, siding and windows.
- e) Calculation of the Enclosed Floor Area and evidence of compliance with the Free Space requirements of Section 8.
- f) If not supplied with the above, then, at least ten (10) days prior to commencement of exterior painting, a schedule of exterior colors to be used.
- g) A landscape plan showing proposed planting for the yard.

The documentation listed above is intended only as a minimum requirement and the Architectural Control Committee shall be free to request any and all other documentation that said Committee in its sole discretion deems necessary. All such documentation shall be signed by the party requesting its approval. In the event said Committee, or its designated representative fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the erection of said residence or the making of such alterations has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with. The ACC may also impose additional set back requirements for front, side or rear yards after considering the Lot in question, the home design in question and the relation of the proposed residence to the adjacent Lots, Streets and Common Areas.

3. Dismissal, Death or Resignation. Any member of the ACC may be dismissed from said ACC provided that a three-fourth (3/4) majority of the above-named members, other than the member whose dismissal is the subject of the vote, vote for such dismissal. In the event of the death or resignation of any member of said Committee, the remaining member, or members, shall have full authority to approve or disapprove such design and locations, or to designate a representative with like authority, and to designate a successor except that during the

Period of Developer Control, the Declarant shall act as the ACC. Neither the members of such ACC, nor its designated representative, shall be entitled to any compensation for services performed pursuant to this covenant. At any time after the end of the Period of Developer Control, the then record Owners of seventy-five percent (75%) of the Lots shall have the power through a duly recorded written instrument to eliminate the ACC and/or one or more of the restrictions it enforces or restore to it any of its powers and duties.

4. Location of Improvement on Lots. Anything in these Restrictions to the contrary notwithstanding and prior to the recording of the Certificate, the Developer, its successors and assigns, shall have, and does hereby reserve, the right to determine the location of all buildings upon the respective Lot or Lots, except as it may be restricted in the making of such determination by governing city ordinances or the provisions of Sections 6 & 8 herein.

#### **SECTION 10. MAINTAINING SIGHT DISTANCE**

No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways, shall be placed or permitted to remain on any Corner Lot within the triangular area formed by the Street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the Street property lines extended. The same sight-line limitations shall apply on any Lot within ten (10) feet from the intersection of the Street property line with the edge of a driveway or alley. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

#### **SECTION 11. MOBILE HOMES, MANUFACTURED HOMES, RESIDENTIAL DESIGN MANUFACTURED HOMES AND MODULAR HOMES PROHIBITED**

No Mobile Homes, Manufactured Homes, Residential Design Manufactured Homes or Modular Homes, shall be allowed to be erected on any of the Lots herein restricted. "Manufactured home" means a factory-assembled structure, including single-wide, double-wide and multi-wide units, equipped with the necessary utility service connections and readily movable on its own running gear and designed to be used as a single-family residential dwelling meeting the Federal Manufactured Home Construction and Safety Standards and Seal established by 42 U.S.C. Section 5403 (HUD Guidelines of June 15, 1976). "Mobile home" means a structure, transportable in one or more sections, which has a body width of eight (8) feet or more and a body length of thirty-six (36) feet or more and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein, but does not include any structure which is subject to the Federal Mobile Home Construction and Safety Standards pursuant to 42 U.S.C. Section 5403.

#### **SECTION 12. REQUIRED BUILDING MATERIALS**

1. Developer or Architectural Control Committee shall approve the exact location and front and rear elevations and foundation exposure of each residence proposed to be built on a Lot. All exterior basement foundation and walls that are exposed above final grade shall be no more than twelve (12) inches on the front, side and rear, unless the Architectural Control Committee consents to greater exposure. If required by the Architectural Control Committee, all exposed exterior basement foundations shall be painted the same color as the residence or covered with siding compatible with the residence.

2. Roofs shall be composition shingles, slate tile, clay, concrete or similar or other materials approved by the Architectural Control Committee. No wood shake shingle roofs shall be permitted without the approval of the architectural Control Committee. All specific types and colors shall be approved by the Architectural Control Committee. No flat roofs unless with permission of the ACC.

3. Exterior walls of all residences and all appurtenances thereto shall be of stucco, brick, stone, hardi plank/concrete siding, wood shingles, Masonite or wood lap siding, plate glass, glass block, or any combination thereof. "A "Smart Board" or "Smart Panel" product that has been approved by the Developer or the Architectural Control Committee is an accepted siding for the front, side and/or rear exteriors of all homes. The Architectural Control Committee may condition its approval of certain "Smart Board" or "Smart Panel" products by giving approval only for use on rear or side exteriors. Board and bat siding, manufactured stone and lava rock is prohibited for exterior walls unless approved by the Architectural Control Committee. All exterior materials, products and colors must be approved by the Architectural Control Committee. Architectural treatment and materials on the front of each house are to be masonry material (or lap-siding if all other portions of residence are lap- siding) and all such materials on the front of each residence are to be continuous from one front corner to the other including all intervening side returning walls unless otherwise approved by Architectural Control Committee.

4. All wood and Masonite exteriors, except roofs, shall be covered with a workmanlike finish of two coats of high quality paint or stain unless another finish is approved in writing by the Architectural Control Committee. Further, all exterior color schemes of any residence must be approved in writing by the Architectural Control Committee at the time that plans are submitted for approval. All guttering must be painted and/or pre-finished. Exterior decks shall be painted or stained to coordinate with the exterior of the residence, except as may be approved in writing by the Architectural Control Committee. Plans for exterior decks, including colors of paint or stain must be approved in writing by the Architectural Control Committee. If paint colors have not been selected prior to construction, no paint may be applied prior to approval by the Architectural Control Committee.

5. All windows shall be either thermal-paned casement, thermal pane double hung, slide-by thermal pane or "low E" thermal pane single hung windows. All windows shall be constructed of glass, wood, fiberglass, vinyl or vinyl clad, or any combination thereof; storm windows may include colorized metal trim (other than silver). All exterior doors and louvers

shall be functional. All residences shall have a house number plate in a style approved by the ACC to be located adjacent to the front door of the residence.

6. All exterior flues (being those flues outside the building sidewalls) must be detailed in the drawings submitted to the Architectural Control Committee, and must include a foundation under the projection and a decorative metal cap. Wood flues may be utilized within the building sidewalls when approved in writing by the Architectural Control Committee. No zero clearance fireplace flue tops are to be erected or installed upon any home located within the subdivision without the written approval of the Architectural Control Committee.

7. All exterior doors and louvers shall be constructed of wood, fiberglass, vinyl or vinyl clad colored metal (other than silver) and glass or any combination thereof.

8. Each residence shall, unless otherwise approved by the ACC, include a poured concrete basement, which shall contain a floor area comprised of at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages. Each residence shall, unless otherwise approved by the ACC, include a poured concrete foundation.

9. Any building products or construction methods which may come into general usage for dwelling construction after the date of this Declaration shall be acceptable if approved in writing by the Architectural Control Committee. From time to time, the ACC may establish certain guidelines specifying a list of specific types, colors and other aesthetic factors of the materials to be used for composite, slate, tile, clay and concrete roofs within the Subdivision (whether it is part of new construction or reroofing). The guidelines may generally specify the characteristics of the permitted roofing materials and/or specifically approve certain products by manufacturer name and product name, color, etc. The ACC shall have the right to establish and to alter the guidelines (by addition or deletion) from time to time at its sole discretion. Notwithstanding the forgoing provisions requiring or prohibiting specific building materials or products, any building materials or products that may become in common or general usage for residential construction of comparable quality and style in the area, as determined by the ACC in its absolute discretion, shall be acceptable upon written approval by the ACC in its absolute discretion. In the event that the City of Olathe or other governmental 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 ACC 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.

### **SECTION 13. COMMENCEMENT AND COMPLETION OF CONSTRUCTION**

1. Unfinished or Incomplete Construction or Finishing. No excavation, foundations, footings, building or other form of improvement on any Lot shall be permitted to remain in an unfinished condition for longer than one (1) year after commencement of construction, unless, prior to expiration of same, an extension of such one (1) year period has been approved in writing by the Architectural Control Committee upon Owner's submission to such Architectural

Control Committee of a written application for such extension wherein Owner has demonstrated to the satisfaction of the Architectural Control Committee why such construction cannot be completed within such time period. In all events, such extension may be granted or denied in the absolute and sole discretion of the Architectural Control Committee. In the event of fire, windstorm, or other damage, no building on any Lot shall be permitted to remain in such damaged condition longer than three (3) months. Any Owner of a structure in violation of this section may, in the discretion of the Architectural Control Committee, be assessed a fine of from One Dollar (\$1.00) to One Hundred Dollars (\$100.00) per day for every day the violation continues. In addition to the above remedy, in the event construction is not commenced within a sixty (60) day period following the date of delivery of the Deed from the Developer to the purchaser of such Lot (or written extension thereof, if any, signed by Developer), the Developer shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Lot from such purchaser at ninety-five percent (95%) of the sale price of the Lot from the Developer to the initial 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, interest or other expenses paid or incurred by or for such Owner.

2. Liens. The fine provided for herein, if not paid when due by said Owner, shall become a lien upon the real estate upon which the structure in violation of this section is located, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed upon said real estate. Said fines shall be due thirty (30) days from the date of notification of the then record Owner of any Lot upon which the violation occurs, and if not paid within said thirty (30) days period, shall bear interest at the rate of eighteen percent (18%) per annum until paid. Any such interest accruing shall also be a lien upon the real estate and all such liens may be enforced by the Association in any court in Johnson County Kansas, having jurisdiction of suit for the enforcement of such liens.

3. Post Construction Changes. Following the completion of construction of any residence, no significant landscaping change (including ones which affects drainage for the Lot), significant exterior color change or exterior addition or alteration shall be made to the residence unless and until the change, addition or alternation has been submitted to and approved in writing by the ACC. All replacements of all or any portion of the completed structure because of age, casualty, loss or other reason, including, without limitation, roofs and siding, shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the ACC.

4. Underground Utilities. All utility connections to any residence shall be installed via underground service connection. The Developer will endeavor to provide underground electric, telephone and cable service to the Subdivision. All residences in the Subdivision shall meet minimum grade 1 requirements of the Residential Telecommunications Cabling Standard for low voltage wiring.

#### **SECTION 14. LANDSCAPING AND LAWNS AND GRADING**

1. Prior to the commencement of construction of each residential building, a landscaping plan or letter illustrating and describing landscaping improvements to the Lot must be submitted to the Developer or Architectural Control Committee for approval. All landscaping costs shall equal at least one-half of 1% of the Contract Price for each residence (including the price of the Lot). Owner will include one hardwood tree having at least one and one half (1 ½") trunk diameter. The recommended species for hardwood trees are Oak, Ash or Maple (no soft Maple). Foundation planting shall include a minimum of five (5) three (3) to five (5) gallon plants. The Owner will maintain said trees and replace same if necessary. The Owner shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision and similar subdivisions in the area. Prior to occupancy, all front lawns shall be fully sodded with fine blade Fescue, and each Lot shall be fully and completely landscaped, as required herein. All other areas of the Lawn shall be sodded with fine blade Fescue or commercially seeded with fine blade Fescue, except as may be approved by the Architectural Control Committee. The Owner of each Lot at all times shall keep his lawn, including areas between his residence and any adjacent Street, fully sodded and shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four (4) inches. Zoysia and buffalo grass (and similar types of grass) are not permitted on any Lot. All dead trees, grasses, sod, shrubs and other landscaping elements shall be removed and replaced. Each builder shall use their best efforts to avoid removal of trees on each lot except for foundations, patios, decks, driveways and sidewalks. Landscaping plan must be approved by the Architectural Control Committee prior to the start of construction. All landscaping called for by the Landscaping plan shall be completed prior to occupancy, or within a reasonable time, as approved by the Architectural Control Committee.

2. The Owner shall submit to the City and to the ACC preliminary grading and excavation plans for the Lot prior to commencement of any construction or excavating ground work. All final grading and excavation of each Lot shall be in accordance with a grading plan approved by the City and the ACC. The Owner's plans shall include the drainage plans for storm water run-off from the residence and the Lot. No further excavation or grading not previously approved by the ACC is permitted without the permission of the ACC. The elevation of a Lot shall not be changed so as to materially affect the surface elevation or grade of the surrounding Lots. No landscaping, beams, fences or other structures shall be installed or maintained that impede the flow of surface water. Fences shall extend from ground level to no more than six (6) feet tall. Water from sump pumps shall be drained away from residences (actual and future) but shall not drain to any street or the Common Areas. The ACC and the Developer shall have no liability or responsibility to any contractor, Owner or other party affiliated with the contractor or Owner to grade or maintain any Lot in accordance with the grading plans approved by the City. The Developer and/or the ACC or persons designated by any of them shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination whether or not a Lot is in compliance with such guidelines shall be final and binding on all Owners. In the event at any time the ACC determines that a Lot is not in compliance with the grading and drainage guidelines, standards and plans, the ACC shall give notice to the Owner thereof and demand that corrective action be taken as necessary to achieve

compliance. If fifteen (15) days after notice of such violation or such additional fine as may be specified by the ACC, the Owner of such Lot shall not have taken reasonable steps to correct the same, the ACC shall have the right (but not the obligation), through its agents and contractors to enter the Lot and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association the cost of such compliance and pay the Association a fee equal to twenty percent (20%) of such amount. In the event such Owner fails to pay such reimbursement in full ten (10) days following demand thereof, the Board may thereafter establish a special assessment applicable to such Lot or cost thereof and enforce the same as provided under Kansas law with respect to payment of special tax assessments. It shall not be the Developer's obligation to enforce compliance with grading and drainage plans.

3. Notwithstanding the foregoing, if an owner of more than one (1) Lot plans to commence construction or excavating ground work on one or more Lots, then so long as the grading and excavating of the Lots is in accordance with a master grading plan for those Lots approved by the City and the ACC, then such Owner is not required to submit a preliminary grading and excavating plans on a Lot by Lot basis unless otherwise required by the ordinances and regulations of the City.

## **SECTION 15. LANDSCAPING EASEMENTS**

Developer retains a right-of-way across those aforementioned segments of real property specifically delineated on the Plat of the Subdivision as Common Areas or Tracts or utility easements for the purpose of allowing Developer the right to enter, construct and maintain poles, wires, anchors, pipes, sewer drains, conduits, surface drainage facilities, and sidewalks, and further to mow grass, trim shrubbery, install, maintain or operate sprinkler systems, and/or to undertake any and all necessary work associated with maintaining the appearance of the same. Any mowing, trimming or landscaping work or maintenance of the sprinkler systems, if any, shall be undertaken by Developer at cost to the persons and/or corporations acquiring any interest in any Lot in the Subdivision.

## **SECTION 16. COMMON AREAS**

1. The Developer and its successors, assigns, and grantees, as Owners of Lots and Tracts in this District, shall have the right to use the Tracts only for the intended use of the Tracts as Common Areas. 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 covenants and agrees to convey all of its rights, title, and interest in the Common Areas or Tracts, if any, to the Homes Association no 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, over, under, upon, and through such Common Area as provided in Section 21 below and as reserved on the Plat of the Subdivision.

4. No owner shall improve, destroy, or otherwise alter any Common Area without the express written consent of the Developer or the Homes Association, as applicable.

5. No motorcycles, scooters, trail bikes, dirt bikes, all terrain motorized vehicles ("ATVs"), cars, motorized vehicles, snowmobiles or other snow or ice recreational vehicles or other motorized means of transport may be operated within the Common Areas. No bicycles, tricycles, skateboards, Segways, rollerblades, in-line skates, non-motorized scooters, or similar means of transport or movement may be used within the Common Areas except in such portions paved or developed for such use. No scooters, ATVs, mini-scooters, trail bikes, dirt bikes, snowmobiles or other snow or ice recreational vehicles non-licensed motorbikes or non-licensed motorized means of transport may be operated within the Streets in the Subdivision.

## **SECTION 17. EXTERIOR STRUCTURES**

1. In addition to fences permitted elsewhere in these Restrictions, fences are permitted as follows: fences shall be set back from lot lines as designated by the Architectural Control Committee. Fences may be not more than 6' tall. All fences shall be constructed only of wrought iron or similar ornamental metal type materials or wood or chain link of a quality approved by the Architectural Control Committee. Fences shall comply with all ordinances of the City of Olathe, Kansas.

2. All basketball goals shall be free-standing and not attached to the residence unless the Architectural Control Committee 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 to be selected by the Architectural Control Committee which shall have the right to establish reasonable rules regarding the location and the hours of use of basketball goals, 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.

4. No above ground swimming pools shall be permitted. All pools and hot tubs shall be fenced or otherwise adequately screened. All pools and tubs shall be kept clean and maintained in operable condition.

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. No dog house/dog run shall be larger than 10 square feet.

6. No Exterior Structure that is prohibited under Section 18 below shall be permitted under this Section 17.

7. Any temporary covering of a swimming pool, tennis court, patio or otherwise of a rigid or of a "bubble" type shall be deemed an exterior structure that is subject to the provisions of this Declaration. Pool buildings or gazebos may be constructed within a rear yard set-back area applicable to the Lot; provided that the same shall not exceed one-story in height and are allowed by applicable building codes.

8. No window shall contain any reflective material such as aluminum foil.

9. All firewood stacks which can hold in excess of two cords of wood shall be screened from view from neighboring Lots.

10. All forms of sculpture or yard art must first be approved by the ACC prior to installation.

11. No HVAC or other air conditioning apparatus may be attached to the front of the residence or be located in the front yard of the residence or otherwise be visible from the Street in front of the residence.

#### **SECTION 18.**

#### **BUILDING FOR USES OTHER THAN FOR RESIDENTIAL PURPOSES; NOXIOUS ACTIVITIES; MISCELLANEOUS**

1. 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 so long as such activity (a) does not violate the applicable ordinances of the City of Olathe, Kansas; (b) does not include the employment of any additional person or persons in performance of such activities; (c) such business activity does not include noise, odors, lighting or otherwise annoy or potentially annoy persons residing in the vicinity thereof as determined by the Board in its sole discretion; (d) does not result in substantial traffic (that is, except in certain circumstances otherwise determined by the Board to be appropriate to the applicable parking limitations, however, no more than four (4) vehicles shall be parked at the residence by visitors at any one time); and (e) shall not include the overnight residence of guests.

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, nor shall anything be done which may be or become an annoyance or a nuisance to the Subdivision. 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 in excess of 18,000 GVW or similar 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 seventy-two (72) hours in any two-week period. It is the intent of the parties hereto that all automobiles and vehicles shall be kept in an enclosed garage whenever possible. No unlicensed or inoperative vehicle shall be stored or parked other than inside an enclosed garage. Motorized vehicles shall not be operated on any Lot or Common Area, other than in the street and operation on the streets within the Subdivision is subject to further restriction as set out herein.

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 Control Committee. Should any 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 or applicable federal statute, the Architectural Control 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. Garage sales, sample sales, or similar activities shall be restricted to twice per year, to be held only over a three-to-four day period (commencing on a Thursday and ending on a Sunday). No trash bag, garbage can or other similar trash storage receptacle shall be visible outside any residence except on regularly scheduled trash collection days. Yard waste collection bags may be stored in the rear yard or side yard pending regularly scheduled collection days.

7. If there is a Developer furnished mailbox provided per United States Post Office requirements, no other mailbox or standard therefore shall be erected or installed.

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. Provided, however, stereo speakers and other sound devices shall be allowed on the exterior of any residence or any yard, with prior approval by the Architectural Control Committee. The volume level of such speakers shall be at a reasonable level.

9. No shed, barn, detached garage, or storage facility shall be erected upon, moved onto, or maintained upon any Lot without prior approval of the Architectural Control Committee. All Outbuildings must conform to the following minimum standards:

- a) Size – minimum size of six feet (6') by six feet (6') and maximum size of ten feet (10') by twelve feet (12');
- b) Maximum door height of eight feet (8') and maximum roof peak height of ten feet (10');
- c) Decking of sheds shall be four inch (4") poured concrete or treated wood base;
- d) Siding shall match the house siding in color and material;
- e) Roof shall have gable roof or hip roof;
- f) Roof shingles on all sheds shall match that of the house shingles in color and material;
- g) If windows are included, they shall match house windows in style;
- h) Doors shall be either single-hung or double-hung;
- i) Location of sheds shall be at least five feet (5') from all property lines; and
- j) Additional guidelines may be established by the Architectural Control Committee after review and approval by the Association Board.

10. No fuel storage tanks or LP storage tanks of any kind shall be permitted, above or below ground (other than a portable LP gas tank for use with barbecue grills). In its absolute discretion, the Architectural Control Committee may permit buried or sufficiently shielded LP storage tanks.

11. No driveway shall be constructed in a manner as to permit access to a street across a rear lot line.

12. All exterior lighting (other than holiday decorative lights) shall be white and not colored. All exterior year round landscaping lighting shall be approved in advance by the ACC.

13. No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.

14. No residence or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental of less than one (1) month duration under which occupants are

provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen or similar services; or (ii) rental to roomers or boarders (i.e., rental to one (1) or more persons of a portion of the residence only). No lease may be of less than an entire residence. Any lease agreement shall be in writing, shall require that the tenant and other occupants comply with all provision 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 shall be a default under the lease. Notwithstanding the existence of the lease, the Owner shall remain liable for all obligations, including without limitation, payment of Assessments and compliance with these Declarations.

15. The Architectural Control Committee has the right to allow variances of all requirements contained herein.

## **SECTION 19. ANIMALS**

No animals of any kind shall be raised, bred, kept or maintained on any Lot, except dogs, cats and other common household pets may be 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 ordinances of the City of Olathe and other applicable laws are satisfied. All pets shall be confined to the Lot of the Owner except when on a leash controlled by responsible persons. Owner shall immediately clean up after their pets on all Streets, Common Areas and Lots owned by others. No Owner shall have more than three (3) dogs or cats or a combination thereof on any one Lot.

## **SECTION 20. BILLBOARDS PROHIBITED**

No signs, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any of the Lots hereby restricted or attached to any residence constructed thereon without the consent in writing of the Architectural Control Committee, provided, however, that permission is hereby granted for the erection and maintenance of not more than one (1) advertising board on each Lot as sold and conveyed, said advertising board to be provided by Developer, and may be used for the sole and exclusive purpose of advertising for sale or lease the Lot upon which they are erected; and provided further, that nothing in this section shall be constructed to prohibit the erection of subdivision entrance structures by the Developer, its grantees, assignees, or licensees at such place or places as it or they may determine, which structures may or may not display the name of said subdivision. Developer shall have the right to erect and maintain subdivision signs in accordance with size requirements imposed by the City of Olathe, Kansas. To the extent permitted by law, no political signs or similar signs advertising a Lot Owner's choice in an election shall be erected or maintained on any of the Lots or attached to any residence; if such signs are required to be allowed, then such sign shall not be more than three (3) feet high or three (3) feet high, shall be permitted only in the three (3) weeks prior to the election such sign concerns, and shall be removed within twenty-four

(24) hours after the close of the voting in the election in question. Notwithstanding the foregoing, any residential builder who has purchased more than one (1) Lot may erect signage on its Lots appropriate for marketing such Lots for sale and development provided that such sign has been approved by the Architectural Control Committee, which approval shall not be unreasonably withheld, delayed or conditioned so long as the sign requested by the Owner of the Lot is in keeping with signage utilized by other developers of other residential subdivisions of similar nature in Johnson County, Kansas.

## **SECTION 21. EASEMENTS AND TRACTS**

Easements and Tracts for installation and maintenance of monument signs and for installation and maintenance of utilities and drainage facilities may be reserved on the recorded Plats of the Subdivision or by the Developer as to a specific Lot, prior to the sale of such Lot.

## **SECTION 22. VIEW**

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, planting material or other item on any other part of the Subdivision or on any other Lot which is permitted by this Declaration, because such structure, planting material or other item obstructs any view from the complaining Owner's Lot.

## **SECTION 23. ADDITIONAL EASEMENTS**

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 and grant right-of-way easements therefor, over, under, upon and through all easements and rights-of-way shown on any recorded Plat of the Subdivision or any Common Areas or Tracts of the Subdivision. 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 and the Homes Association as an easement for utility line or service maintenance.

The Developer shall have, and does hereby reserve for itself and its successors and assigns (including the Association and its successors and assigns), an easement over and through all unimproved portions of each Lot in the Subdivision the purpose of performing the powers and duties of the Developer and/or the Association in maintaining any Common Areas. Any physical damage caused in the exercise of such easement shall be repaired by and at the expense of the party exercising the easement right.

## **SECTION 24.**

## **COVENANTS RUNNING WITH THE LAND; ENFORCEMENT**

The agreements, restrictions, and reservations herein set forth are and shall be covenants running with the land into whatsoever hands any of the property in the Subdivision 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. 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 ownership of title to such Lot(s); 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 Owners of any of the Lots and the 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.

### **SECTION 25. ASSIGNMENT OF DEVELOPMENT RIGHTS**

This 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. The person or entity named by Developer as its successor in a written document shall have all rights and authority of the original Developer and shall continue to have all rights of the Developer during the Period of Developer control so long as such successor owns at least one Lot. The designation of the successor Developer may be but need not be recorded in the real estate records.

### **SECTION 26. DURATION OF DECLARATION**

This Declaration shall continue and be binding upon the Developer and upon its successors and assigns (providing Developer continues to own Lots in the Subdivision) and the Owners until December 31, 2051. This Declaration shall automatically be continued thereafter for successive periods of ten (10) years each, provided, however, that the Owners of fee simple title to more than fifty percent (50%) in number of all of the Lots hereby specifically restricted, and set forth in this instrument, may release all of the land which is hereby restricted from any

one or more of the restrictions herein set forth on December 31, 2051, or at least ten (10) days prior to the expiration of any successive ten (10) year period after December 31, 2051.

## **SECTION 27. SECURITY**

Neither the Homes Association, the Developer, nor any successor thereof shall in any way be considered insurers or guarantors of security within the Subdivision. 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, burglar, theft, hold-up, or otherwise. Each owner, guest, and invitee of any Owner assumes all risks for loss or damage to persons, and property on the Owner's Lot.

## **SECTION 28. ADDITION OF OTHER LAND**

The Developer shall have, and expressly reserves, the right from time to time to add such other land as it may now own or hereafter acquire, to the operation of the provisions of this Declaration, by executing and acknowledging any appropriate agreement or agreements for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas. When any other land is so subject to the provisions hereof, whether the same consists of one or more tracts or whether said additions shall be made at one or more times, said land so added shall be subject to all of the terms and provisions hereof, in the same manner and with like effect as though the same had been originally described herein and subject to the provisions hereof.

## **SECTION 29. TERMS AND PROVISIONS OF BUILDER'S REAL ESTATE CONTRACT**

The person(s) to whom a Lot hereby restricted is conveyed prior to issuance of the first Certificate of Occupancy for a residence on such Lot (for purposes of this Section, said person hereinafter referred to as the "Buyer") shall be taken to hold and agree that such conveyance is made upon the condition that, and in consideration of, said Buyer's agreement to comply with and perform the following covenants and conditions contained herein.

1. Insurance. Buyer agrees, on the date of closing, to provide to Developer a Certificate of Insurance evidencing workers compensation and liability insurance required to be maintained by Buyer, such liability insurance to be no less than \$500,000 single-limit and to include products and/or completed operations.

2. Manholes. It is understood and agreed that Buyer is responsible to check all manholes on Lot or Lots purchased and notify Developer in writing at Developer's address, 1111

Main, Suite 1600, Kansas City, Missouri 64105, of any damage needing correction prior to Lot closing. Developer will not be responsible for unreported manhole damage.

3. Sidewalks. Buyer agrees that in the event the City of Olathe, Kansas or any other governmental body having jurisdiction over the real estate herein conveyed requires that sidewalks be installed upon such property, that said Buyer will install said sidewalks in accordance with the requirements of said governmental body at Buyer's sole cost and expense.

4. Indemnification. During the period of construction of improvements upon any Lot, Buyer herein shall indemnify and save Developer and the Architectural Control Committee harmless from any and all claims brought by any persons or entities existing or arising out of the construction of a residence upon any Lot within the Subdivision, for variances allowed from any requirements here-in contained, for the warranty claims of a subsequent purchaser of the residence from the Buyer, and for Buyer's "call back" on any completed residence.

### **SECTION 30. COMMON PROPERTIES**

The Developer shall retain the legal title to the Tracts so long as it owns at least one (1) lot in the Subdivision and/or until the date Developer (or its successor) files the Certificate. On or before conveyance by Developer of the last Lot owned by Developer in the Subdivision or concurrent with filing the Certificate, Developer shall convey the Tracts and other Common Areas to the Association, subject to taxes for the year of conveyance, and to restrictions, conditions, limitations, reservations and easements of record; subject however, to a reservation hereby perpetually reserved to the Developer, its successors and assigns, of the right to use and enjoy the same non-exclusive common utility easements, easements of drainage and ingress and egress easements and use easements for the benefit of additional lands owned or to be owned by the Developer which are added to the Subdivision as additional lands as provided for above.

The owners of lots in the Subdivision as it may exist from time to time, shall have the exclusive right to the use of all common areas as designated on the plat of the Subdivision or as may be designated on subsequent plats of the Subdivision, or as may be created by separate document filed for that purpose with the Register of Deeds of Johnson County, Kansas. The Association shall have the right and power to make reasonable rules and regulations which shall govern the use of said common areas. No land shall be entitled to any of the benefits, improvements or services provided by the Association unless the owner or owners thereof shall have subjected their land to the terms of this Declaration and to the assessments herein provided for.

### **SECTION 31. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Every person or entity which is a fee simple owner of a Lot, including the Developer, and including any person or entity acquiring title by Trustee's Sale, Sheriff's Sale, foreclosure or other process of law shall be a member of the Association, provided that any such person or entity who



holds such interest only as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Owners shall include the owners of lots of additional land that may from time to time be made subject to the terms and provisions of this Declaration in the manner provided for in Section 28. The Association shall be the sole judge of the qualifications of its members. After the end of the Period of Developer Control, each Lot shall be entitled to one vote. Where one or more persons or entities own a single lot, they shall decide among themselves who shall be entitled to cast the vote for said Lot. In no event shall more than one vote be cast per Lot. In the event the owners are unable to agree as to who shall be entitled to cast the vote, no vote for that Lot shall be counted.

**Suspension.** All voting rights of an Owner shall be suspended during any period in which such Owner is delinquent in the payment of any assessment duly established pursuant to this Article or is otherwise in default hereunder or under the By-Laws or Rules and Regulations of the Association and such suspension shall apply to the proxy authority of any voting representative, if any. An Owner whose voting rights have been suspended shall not be considered to be in good standing for purposes of serving on the Board or any Committee of the Association.

## **SECTION 32. POWERS AND DUTIES OF THE ASSOCIATION**

The Association shall have the following powers and duties which it may exercise or perform or decline to exercise or perform whenever in its discretion it may deem them necessary or desirable, to-wit:

1. To enforce either in its own name or in the name of any Owner, any or all building restrictions and use restrictions, or other covenants, obligations or restrictions which may have been heretofore or may hereafter be imposed upon any of the Lots or Tracts, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, declarations or contracts in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

2. To manage and control as trustee for its members all public streets, sidewalks and other public places shown on the plat of the Subdivision and any and all improvements thereon, provided that such management and control of said places and improvements shall at all times be subject to that had and exercised by any city, county and state, or any of them, in which said places and improvements are located.

3. To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

4. To care for, spray, trim, protect and replant trees on all streets and other public places where trees have once been planted, when such services are not available from any public source.

5. To manage, control, operate, maintain, construct, reconstruct, and maintain common areas and amenities, as the Association deems advisable and in the interest of the members including but not limited to recreational facilities, if any.

6. To mow, care for, maintain and remove all rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the subdivision neat in appearance and in good order.

7. To provide for the plowing and removal of snow from sidewalks and streets when such services are not available from any public source.

8. To provide such lights as the Association may deem advisable on streets, parking lots, pedestrian ways, gateways, entrances or other features, and in all other public and common areas, when such facilities are not available from any public source.

9. To provide for the cleaning of streets, gutters, catch basins, sidewalks and pedestrian ways, and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.

10. To erect and maintain signs for the marking of streets and safety signs for the protection of children and other persons when such signs are not available from any public source.

11. To exercise control over such easements as it may require from time to time.

12. To acquire and own title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association and to pay taxes and special assessments on such real estate as may be owned by it; and to pay such taxes and assessments as may be assessed against lands in streets, common areas, and other public or semi-public places within the district.

13. To levy and collect assessments which are provided for in this Declaration.

14. To provide for the maintenance of swimming pools, playgrounds, tennis courts, public and private streets, parking areas, walks, pedestrian ways, gateways, entrances, drinking fountains and ornamental features now existing or which may hereafter be erected or created in

any public or private street, Tract, Common Area, parking area or other public place shown on the plat or created by separate instrument from land included as part of the Subdivision or as designated as common area on the plat of any additional land which may be later added to the Subdivision as provided herein.

15. To make reasonable rules and regulations which shall govern the use of Common Areas or Tracts, including but not limited to restricting the use of common areas from those individuals or members who refuse to comply with the Association's reasonable rules, provided however, that no restriction as to use shall impair that member's right to vote in the Association, and no restriction as to use shall relieve that member's obligation to pay common assessments which are provided for in this Declaration.

16. To obtain such insurance as the Association deems advisable, including but not limited to fire and extended coverage, covering the full insurable replacement value of the common areas; liability insurance insuring the Association against any and all liability to the public, to any owner, or to the invites or tenants of any owner arising out of their occupation and/or use of the common areas; workmen's compensation insurance to the extent necessary.

17. To hire or employ such individuals, firms or management companies which the Association shall deem appropriate to carry out the duties of the Association, including but not limited to management, maintenance, accounting and legal services, and to delegate such responsibilities as it deems advisable.

### **SECTION 33. METHOD OF PROVIDING GENERAL FUNDS**

1. For the purpose of providing general funds to enable the Association to perform the duties herein provided for, all Lots shall be subject to an annual assessment which may be levied by the Developer during the Period of Developer Control or by the Association thereafter from year to year and shall be paid to the Developer or the Association annually in advance by the respective owners of the said assessable lands subject thereto, which said assessable land shall be deemed to be all of the above enumerated Lots in the aforesaid plat of the Subdivision on which dwellings have been erected, together with such other Lots as may from time to time be added to these restrictions as provided herein and on which dwellings have been erected. The Developer or the Association may from year to year fix and determine the total amount required in this general fund, and may levy and collect an annual assessment not to initially exceed \$200 for each Lot on which a dwelling has been erected within the Subdivision; provided, however, that in respect to the year in which a dwelling is constructed on any certain lot covered by this Declaration, the assessment for said year shall be pro-rated on the basis of the date of occupancy of said dwelling. The Association (or the Developer during the Period of Developer Control) may fix a reduced annual assessment on a Lot upon which no dwelling has been constructed or may determine to charge the same assessment as on a Lot with a dwelling. Non-use of the common area, whether by choice of the owner, or pursuant to association rule, shall in no way relieve the owner's responsibility for payment of any assessments set out herein.

2. The maximum annual assessment upon each Lot as aforesaid may be increased by not more than ten percent (10%) from year to year, so long as at a meeting of the members, specially called for that purpose, prior to the date on which the assessment is levied for the first year for which such increase is proposed, a majority of the members present at such meeting may authorize such an increase by an affirmative vote therefore; and provided further that the maximum annual assessment on each lot as aforesaid may be increased by an amount greater than ten percent (10%), so long as at a meeting of the members specially called for that purpose, prior to the date on which the assessment is levied for the year for which such increase is proposed, 66-2/3 of the members present at such meeting authorize such an increase by an affirmative vote therefore. Unless the increases provided for in paragraph 2 of this Article are specifically limited by the resolutions in which they are contained, to be for a specified period, they shall be effective until rescinded by the Association, at a meeting specially called for such purpose, by an affirmative vote of 66-2/3 of the members present, and shall thereafter be effective commencing on the first day of the next succeeding year.

3. Whenever the Association may deem it advisable to submit to the members a proposal for increasing or decreasing the permissible maximum amount of the annual assessment, it shall notify the members of the Association by mailing to such members at the last known address, with United State postage thereon prepaid, a notice of such meeting, giving the time and place at which it is to be held, and the fact that an increase or decrease in the amount of the annual assessment is to be voted upon at such meeting.

4. The annual assessment on a Lot shall be fixed and levied as of January 1 of each year and on the same date annually thereafter. It will be the duty of the Developer or the Association to notify all owners of assessable Lots, on or before that date, giving the amount of the assessment on each tract owned by them and the date when such assessment is due. Failure to levy the assessment prior to January 1, of each year for the next succeeding fiscal year beginning on January 1, shall not invalidate any such assessment made for that particular year; nor shall failure to levy an assessment for any one year affect the right of the Developer or the Association to do so for any subsequent year. No failure to notify any owner, nor failure of any owner to receive notice of assessment, shall relieve any owner from the duty and obligation of paying an assessment, but may relieve said owner of the obligation to pay any interest or late charge thereon. All owners shall be deemed to have notice of the existence of the assessment, and shall have the duty to inquire as to the amount if notice is not received. If the assessment is made subsequent to January 1 of any year, then it shall become due and payable not later than 30 days from the date of levying the assessment. The Association may elect to permit collections in quarterly or semi-annual payments in lieu of the annual payments provided for herein.

5. The Association may levy a special assessment for a period not to exceed two (2) years, for the purpose of providing emergency funding, construction or reconstruction of common property elements or other purpose, at any time it deems necessary, on an affirmative vote of three-fourths of the owners present at a special meeting called for said purpose with notice to all owners mailed not more than 60 and not less than 10 days prior to said meeting. Said notice shall advise owners of the time and place for the meeting, the purpose of the meeting, and the amount of special assessment being proposed.

**SECTION 34.**  
**LIEN ON REAL ESTATE**

The assessment provided for herein shall become a lien on the real estate against which it is levied as soon as it is due and payable as above set forth, provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate and, in the event of acquisition of title by a first mortgage or Deed of Trust holder through Trustee's sale, foreclosure or other process, such lien shall be discharged as a lien against such lender acquired property. In the event of the failure of any owner to pay the assessment on or before the first day of February following the making of such assessment, then such assessment shall bear interest at nine percent (9%) per annum from the first day of January, but if the assessment is paid before February 1 (or within 30 days from the date of the assessment, if the assessment is made subsequent to December 1 for the calendar year beginning January 1) then no interest shall be charged.

On or after February 1 of each year after the Lot is subject to assessment, or within 30 days from the date of levying the assessment for the calendar year during which and for which the assessment is levied, the assessment shall become delinquent and payable of both principal and interest and may be enforced as a lien on said real estate, in proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such lien. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may at its discretion file certificates of non-payment of assessments in the office of the Register of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the owner or owners of the property therein described a fee of \$2,000, which fee is hereby declared to be a lien upon the real estate so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. Such fee shall be collectible in the same manner as the original assessments provided for herein, and in addition to the interest and principal due thereon. In the event it is necessary to bring suit to enforce such lien, the Association shall be entitled to recover its reasonable attorney's fees from the owner or owners of the property, jointly and severally, upon which lien is enforced.

Such liens shall continue for a period of five (5) years from the date of delinquency, and no longer, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of judgment establishing same.

In the event of Trustee's sale or foreclosure of the lien of any valid first mortgage or Deed of Trust now existing or which may hereafter be placed on said real estate or lot therein, such sale and/or foreclosure shall discharge the lien for assessments provided in this Article. However, nothing in these restrictions shall prevent the Association from instituting or prosecuting an action for collection of assessments against the record owner or owners of the property at the time the assessment was made and within five (5) years from the date said assessment was due, whether or not the lien provided in this Article has expired.

**SECTION 35.**  
**LIMITS ON EXPENDITURES**

The Association shall at no time expend more money within any one year than the total amount of the assessment for that particular year, plus any surplus which it may have on hand from previous assessments; nor shall said Association enter into any contract whatsoever binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities, it being the intention that the assessment for each year shall be applied as far as practicable toward the payment of the obligations of that year, and the Association shall have no power to make a contract affecting the assessment of any future or subsequent year except for utilities.

**SECTION 36.**  
**AMENDMENTS**

1. After the end of the Period of Developer Control, this instrument may be modified and amended by written consent of the owners of two thirds of the Lots within the Subdivision, as then constituted, evidenced by a declaration duly executed and acknowledged by such owners and recorded in the office of the Register of Deeds of Johnson County, Kansas. Prior to the end of the Period of Developer Control, this instrument may be modified by written consent of the Developer and the owners of one-half of the Lots within the Subdivision not owned by the Developer.

2. This Declaration may be terminated, and all of the land now or hereafter affected may be released from all of the terms and provisions thereof, by the owners of all the lots then subject thereto, executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas.

**SECTION 37.**  
**BOARD OF DIRECTORS AND DEVELOPER CONTROL PERIOD**

1. Developer Control of the Association. Notwithstanding anything to the contrary herein, the Developer shall have the right to act as if it were the Association and perform any functions which could be performed by the Association for a period commencing the date of the recording of this Declaration and ending on the date when the Developer has recorded the Certificate. Said rights to control and act shall be referred to in this Section as the "Right of Developer Control." Notwithstanding the foregoing reservation of the Right of Developer Control, the Developer may voluntarily surrender the Right of Developer Control before the termination of the period provided in the preceding sentence (the "Period of Developer Control") by recording the Certificate, but Developer may require, for the duration of the Period of Developer Control, that specified actions of the Association be approved by the Developer before they become effective, such actions to be specified by the Developer in the Certificate. The Developer need not form the Association until such time as the Certificate has been

recorded. When or if Developer (or its designated successor) ceases to own any Lot subject to this agreement, then the Period of Developer Control shall cease whether or not the Developer (or its designated successor) has recorded the Certificate.

2. The affairs of the Association once formed shall be managed by a Board of Directors consisting of five (5) directors, elected by the members as provided in the Articles of Incorporation of the Association.

### **SECTION 38. NOTICES AND ESTABLISHMENT OF HOA**

1. Notice: The Association shall notify all owners of land in the district as it may exist from time to time, insofar as the addresses of such owners are listed with said Association, of the official address of said Association, the place and time of regular meetings of the Association, and the place where payment shall be made and any other business in connection with said Association may be transacted, and shall notify members of any changes thereto.

2. Owners shall list with the Association their official mailing address, and if none is listed, notices from the Association shall be mailed to the street address shown on the residence in the Subdivision. A written or printed notice, deposited in the United State Post Office, with postage thereon prepaid, and addressed to the respective owners as provided above, shall be deemed to be sufficient and proper notice for any purpose of this Declaration where notices are required.

3. Prior to the organization and incorporation of the Association contemplated by the terms of this Declaration, Developer shall have the right, at its option, to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were hereby given directly to Developer. Developer may, by appropriate agreement made expressly for that purpose, assign or convey to any person or corporation all of the rights, reservations, and privileges reserved by it in this section, and by such assignment or conveyance being made, its assigns or grantees may at their option exercise, transfer or assign such rights at any time or times, in the same way and manner as though directly reserved by them or it in this instrument.

4. All of the provisions of this Declaration shall be deemed to be covenants running with the land, and shall be binding upon Developer, its successors and assigns, and all owners of lots and members of the Association.

5. Developer shall, concurrent with the end of the Period of Developer Control, organize and form the Association as a Kansas not-for-profit corporation or limited liability company and once formed, the Association shall keep said entity organized and qualified in good standing under the laws of the State of Kansas.

### **SECTION 39.**

## MISCELLANEOUS

1. 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.

2. Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Lots. To the extent any provision of this Declaration conflicts with any provisions of any law, ordinance, resolution or permit, then, in that case, the provisions of this Declaration shall control. To the extent that this Declaration imposes any restriction or prohibition upon the use or occupancy (including the construction of any building or structure) of any lot, that is greater or more prohibitive than what is imposed by any provision of any law, ordinance, resolution or permit, then, in that case, the provisions of this Declaration shall control.

3. Waiver and Exceptions. The failure by the Association, Developer, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Subdivision or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

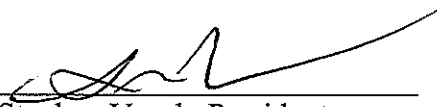
4. Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of these Restrictions nor the meaning thereof.

5. Singular and Plural, Masculine and Feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

6. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed effective as of the 5 day of September, 2019.

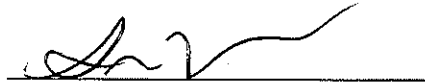
WHITETAIL HOMES ASSOCIATION, INC.

  
\_\_\_\_\_  
Stephen Veach, President



**VERIFICATION OF VOTE TO AMEND**

I, the duly elected President of Whitetail Homes Association, Inc., hereby verify that a vote to approve and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements and Assessments ("Declaration") was duly noticed for the 8th day of August, 2019, and that the vote passed by a two-third (2/3) written vote of all Members, and that I, as President, was duly authorized to execute and record the foregoing instrument with the Register of Deeds of Johnson County, Kansas as the Declaration governing all Lots in the subdivision.

A handwritten signature in black ink, appearing to read 'Stephen Veach', is written over a horizontal line.

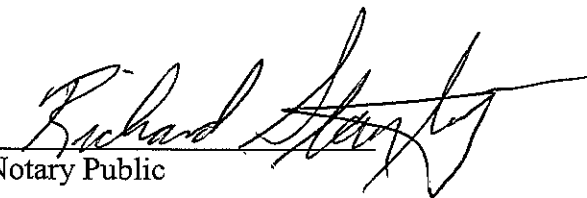
Stephen Veach, President  
Whitetail Homes Association, Inc.

**ACKNOWLEDGMENT**

STATE OF KANSAS            )  
  )ss  
COUNTY OF JOHNSON        )

BE IT REMEMBERED, that on this 5 day of September, 2019, before me, the undersigned, a Notary Public in and for the County and State set forth above, personally appeared Stephen Veach, known to be the President of Whitetail Homes Association, Inc., personally known to be the same person who executed as such officer, the above and foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements and Assessments on behalf of said corporation, and such person duly acknowledged execution of the same to be the free act and deed of said corporation.

In WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year least written above.

  
Notary Public

My Appointment Expires:

11/20/20



## **EXHIBIT A**

All of Lots 1 through 55, Whitetail 1st Plat, a subdivision in the City of Olathe, Johnson County, Kansas

All of Lots 58 through 103, Whitetail 1st Plat, a subdivision in the City of Olathe, Johnson County, Kansas.

All of Tracts A through G, Whitetail 1st Plat, a subdivision in the City of Olathe, Johnson County, Kansas

All of Lots 105 and 106, Whitetail 3rd Plat, a subdivision in the City of Olathe, Johnson County, Kansas.