

3281498

**FALCON VALLEY 3RD PLAT
HOMES ASSOCIATION DECLARATION**

THIS DECLARATION is made as of the 30 day of July, 2001, by Falcon Valley L.L.C. a Kansas company ("Developer").

WITNESSETH:

WHEREAS, Developer has executed and filed with the Register of Deeds of Johnson County Kansas, a plat of the subdivision known as "Falcon Valley 3rd Plat", which plat includes the following described lots and tracts:

All of Lots 1 through 62 and Tracts C and E, FALCON VALLEY 3RD PLAT, a subdivision of land in the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

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

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

ARTICLE I. DEFINITIONS

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

- (a) "Lot" means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the amount of annual and special assessments dues with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot".
- (b) "Subdivision" means collectively all of the above described Lots and tracts in Falcon Valley 3rd Plat Villas, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.
- (c) "Developer" means Falcon Valley L.L.C. a Kansas company, and its successors and assigns.
- (d) "Owner" means the record owner(s) of title to any Lot, including the Developer.

- (e) "Common Area" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the Subdivision, (ii) all landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all the Owner's within the Subdivision, (iii) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the Subdivision, whether or not any "Common Area" is located on any Lot.
- (f) "Homes Association" means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the Homes Association for the Subdivision.
- (g) "Board" means the board of Directors of the Homes Association.
- (h) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all or, at the Developer's discretion, substantially all of the Lots in the Subdivision (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its absolute discretion at any time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.
- (i) "Turnover Date" means the earlier of: (i) the date as of which 95% of all of the Lots in the Subdivision (as then composed or contemplated by the Developer) have been sold by the Developer and residences have been constructed thereon, or (ii) the date Developer, in its absolute discretion, selects as the Turnover Date for this Declaration.
- (j) "City" means the City of Lenexa, Kansas.

ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

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

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

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

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

ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

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

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

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

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

ARTICLE IV. ANNUAL ASSESSMENTS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision, other than Lots then owned by the Developer, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof and, until further action of the Homes Association, shall be **\$450.00** per quarter. If and when the initial Recreational Facilities are substantially completed and available for use, the optional amount of \$150.00 per year may be paid to Falcon Valley Homes Association for use of the facilities.
2. The rate of annual assessment upon each Lot in the Subdivision may be increased (a) by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year for each of 2002 through 2006, (b) after 2006 by the board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year, or (c) at any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting are entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2 of Article III above.
3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 2002) and shall be due and payable on January 1st of each year; provided, however, that (i) the first assessment for each Lot shall be due and payable only upon the transfer or ownership of the Lot from the Developer to another party (including a builder) and shall be prorated as of the date thereof and (ii) if the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the board) of the amount of such increase for

the remainder of such year shall be due and payable on such effective date. No Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect thereto.

ARTICLE V. SPECIAL ASSESSMENTS

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

ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment within 30 days after the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the rate of 10% per annum from the delinquency date until paid, which interest shall become part of the delinquent assessment and the lien on the lot. Should the Homes Association engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with interest thereon and collection costs, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due.
2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to such foreclosure or deed in lieu thereof but shall not release such Lot from liability for any assessment applicable to periods thereafter.

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

ARTICLE VII. LIMITATION ON EXPENDITURES

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

ARTICLE VIII. NOTICES

1. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.
2. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the person or last known person entitled to such notice at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE IX. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves the right (but not the obligation), from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration such other adjacent or nearby (without reference to any street, park or right of way) lands as it may now own or hereafter acquire (regardless of whether the additional property is part of the property platted as Falcon Valley 3rd Plat Villas or is known by a name other than Falcon Valley 3rd Plat Villas) by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such additional property to all of the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in its absolute discretion.

ARTICLE X. AMENDMENT AND TERMINATION

1. This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (a) the Owners of at least two-thirds (2/3) of the Lots within the Subdivision as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer.
2. Anything set forth in Section 1 of this Article X to the contrary notwithstanding, except the provision relating to the requirement of the City's consent, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording an appropriate instrument in writing for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision of any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable Veteran's Administration, Federal Housing Administration or similar programs, laws and regulations, or (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision.
3. If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individual signing this Declaration on behalf of the Developer as of the date of such execution.

ARTICLE XI. ASSIGNMENT

1. The Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes by the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.
2. The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

ARTICLE XII. COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.
2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation or default.
3. No waiver of any violation or default shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have.

ARTICLE XIII. SEVERABILITY

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

ARTICLE XIV. COMMON AREAS

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

3. Subject to Section 2 above, the Developer shall convey by special warranty deed all of its rights, title and interest in the Common Areas (except any part thereof that is within any Lot or outside of the Subdivision) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Notwithstanding the actual date of transfer, except as otherwise provided in an agreement with the Developer, the Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for property repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Developer shall not constitute an assignment by the Developer of any of its rights, as the Developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer as an additional insured on the insurance coverage until the recording of the Certification of Substantial Completion.

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

DEVELOPER

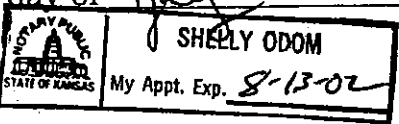
Falcon Valley L.L.C.

By: *Rustom K. Ferzandi*
 Rustom K. Ferzandi, Manager Member

STATE OF KANSAS }
 COUNTY OF JOHNSON } SS
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 REBECCA L. DAVIS
 REGISTER OF DEEDS } SS
 COUNTY OF JOHNSON }

Personally appeared before me, a notary Public, in and for said County and said State, the above named, who is personally known to me to be the same person who executed the foregoing instrument in writing and duly acknowledged the execution of the same. * Rustom K. Ferzandi, Manager Member

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 30 day of July, 2001.



Shelly Odom
 Notary Public

My Commission Expires: 8-13-02

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