

FALCON VALLEY 3RD PLAT

DECLARATION OF RESTRICTIONS

THIS DECLARATION is made this 30 Day of July, 2001, by: FALCON VALLEY L.L.C. ("Developer").

WITNESSETH:

WHEREAS, Falcon Valley L.L.C. has executed and filed with the Register of Deeds of Johnson County, Kansas, a plat of the subdivision known as "Falcon Valley 3rd Plat" AND

WHEREAS, such plat creates the subdivision of Falcon Valley 3rd Plat, composed of the following described lots, to-wit:

Lots 1 through 62 of Falcon Valley 3rd Plat and Tracts C and E, a subdivision of the City of Lenexa, Johnson County, Kansas, according to the recorded plat thereof.

ARTICLE I. DEFINITIONS

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

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

2. The term "District" shall mean all of the above described lots in Falcon Valley 3rd Plat, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

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

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

5. The term "Common Areas" shall mean:

a. street rights-of-way;

b. streets and street islands;

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

Shook, Hardy & Bacon
P.O. Box 123

thereto; and

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

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

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

8. The term "Exterior Structure" shall mean any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof and shall include, without limitation, any deck, gazebo, greenhouse, doghouse or other animal shelter, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, satellite dish, basketball goal, swing set, trampoline, sandbox, playhouse, treehouse, or other recreational or play structure.

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

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

11. The term "Certificate of Substantial Completion" ("Certificate") shall mean a certificate executed, acknowledged, and recorded by the Developer stating that all, or at the Developer's discretion substantially all, of the Lots in the District (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its discretion at any time and for any limited purpose hereunder.

12. The term "Approving Party" shall mean;

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

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

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

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

ARTICLE II. USE OF LAND

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

ARTICLE III. BUILDING MATERIAL REQUIREMENTS

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

ARTICLE IV. MINIMUM FLOOR AREA

No residence shall be constructed upon any Lot in the District unless it has a total finished floor area of a minimum of 1,600 square feet on the first floor for a 1 story and reverse 1 ½ story, a minimum finished first floor area of 1,150 square feet for a 1 ½ story and minimum finished first floor area of 850 square feet on the first floor for 2 story plans.

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

ARTICLE V. APPROVAL OF PLANS AND POST-CONSTRUCTION CHANGES

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

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

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

ARTICLE VI. SETBACKS

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

All golf course lots shall be subject to a rear yard setback of 35 feet, non-golf course lots rear setback of 20 feet, front yard build line of 30 feet and side yard setback of 7 feet on each side, measured parallel to the property line.

ARTICLE VII. COMMENCEMENT AND COMPLETION OF CONSTRUCTION

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

ARTICLE VIII. EXTERIOR STRUCTURES

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

1. No **fences** shall be allowed in Falcon Valley 3rd Plat except those in compliance with the following requirements;
 - a. no fences shall be permitted on any property line of golf course lots. Fences required around swimming pools shall be of wrought iron, five foot high maximum, meet codes of the city of Lenexa and shall not extend more than two feet beyond the perimeter of the surrounding deck nor encroach on any side or rear setback line. Landscaping of pool enclosure fences is required and shall be approved by the Architectural Committee.
 - b. fencing on all other lots shall be restricted to wrought iron of an approved design and color, five feet in height. Such fencing shall not extend closer to the front of the lot than the rear corners of the residence.
 - c. privacy fencing adjacent to patio areas shall be permitted subject to the approval

of the Architectural Committee or Developer. In no event shall such privacy fencing extend beyond the side or rear setback lines of the residence.

2. All **basketball goals** shall be free-standing and not attached to the residence unless the Architectural Committee 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 Committee which shall have the right to establish reasonable rules regarding the location and the hours of use of basketball goals, and any such rules shall be binding upon all of the Lots.

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

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

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

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

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

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

1. Except as otherwise provided in Article II above, no residence or Exterior Structure shall ever be placed, erected, or used for business, professional, trade, or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with the applicable ordinances of the City of Lenexa, Kansas.

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

3. No vehicle, trailer, bus, van, camper, boat, or similar apparatus shall be parked, left, maintained, repaired, serviced, or stored on any Lot or in any yard. No truck or commercial vehicle shall be parked, left, or stored on any driveway or street for more than an eight-hour period. No trailer, bus, van, camper, boat, or similar apparatus shall be parked, left, or stored in any driveway or street for more than a 24-hour period. It is the intent of the parties hereto that all automobiles shall

be kept in an enclosed garage whenever possible. Motorized vehicles shall not be operated on any Lot or Common Area, other than in the street.

4. No television, radio, citizen's band, short wave or other antenna, satellite dish, solar panel, clothesline or pole, or other unsightly projection shall be attached to the exterior of any residence or erected in any yard. Satellite dishes up to 18 inches in diameter may be permitted with the location to be approved by the Architectural Committee. Should 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, the Architectural Committee shall have the right to establish rules and regulations regarding the location, size, landscaping, and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood, and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the residence.

5. All garage doors shall remain closed at all times except when necessary for entry or exit.

6. No garage sales, sample sales, or similar activities shall be held within the District without the written consent of the Approving Party.

7. No mailbox or standard therefor shall be erect or installed without the prior approval of style, material, construction, and location being granted by the Approving Party. The Developer shall provide per United States Post Office requirements.

8. No speaker, horn, whistle, siren, bell, or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed, or maintained upon the exterior of any residence or in any yard.

9. All residential service utilities shall be underground.

10. In the event of vandalism, fire, windstorm, or other damage, no buildings shall be permitted to remain in damaged condition for longer than three months.

11. No shed, barn, detached garage, or other storage facility shall be erected upon, moved into, or maintained upon any yard.

12. No fuel storage tanks of any kind shall be permitted.

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

14. The Owner of each Golf Course Lot, at all times and at the Owner's expense, shall provide adequate erosion control to protect the Golf Course Property from sediment from the Lot and, to the extent not assumed by the Developer or the Homes Association, or for the Developer on such Lot as contemplated in Article VIII (1) above.

15. **The Developer has the right to allow variances of all requirements contained herein.**

ARTICLE X. ANIMALS

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

ARTICLE XI. LANDSCAPING AND LAWNS

Prior to occupancy, and in all events within three months after completion of construction, all lawns, including all areas between each residential building and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that the Owner of a Lot may leave a portion of the Lot as a natural area with the express written permission of the Developer. Prior to occupancy, and in all events within nine months following commencement of construction of the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the District and in accordance with the plans approved by the Developer. All vegetable gardens shall be located in the back yard. The Homes Association shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four inches and each Homeowner shall properly maintain and replace all trees and landscaping.

Buyer acknowledges that all of the \$2,000 landscaping allowance must, in fact, be spent for landscaping in front of the home. None of this amount shall be applied to sod or irrigation systems. Credits of any nature will not be permitted with respect to the allowance. Buyer must submit to Developer its own landscaping plan, which will be subject to the Developer's sole and absolute discretion for approval. Should the plan submitted by Buyer be approved by Developer, then weather permitting, all landscaping shall be completed prior to closing. Should weather not permit, Title company shall hold all of the allowance until the work is completed by a landscape company or buyer has provided the listing agent with copies of paid invoices totaling not less than \$2,000. In any event, the allowance shall only be released when the landscaping is actually installed.

ARTICLE XII. EASEMENTS FOR PUBLIC UTILITIES; DRAINAGE; MAINTENANCE

The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the right to locate, erect, construct, maintain, and use or authorize the location, erection, construction, maintenance, and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon, and through all easements and rights-of-way shown on the recorded plat of the District or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District, for purposes of installing, maintaining, or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners in the District, and the Homes Association as a cross easement for utility line or service maintenance

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

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

No water from any roof, downspout, basement, or garage drain or surface drainage shall be placed in or connected to any sanitary sewer line; nor shall any other connection of any kind be made to a sewer line without the prior written approval of the Developer.

ARTICLE XIII. COMMON AREAS

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

ARTICLE XIV. ARCHITECTURAL COMMITTEE

1. The positions on the Architectural Committee shall be divided into two classes with staggered two-year terms. No committee member shall serve for more than two consecutive terms (a full term being defined as 18 or more months). The foregoing provisions shall not apply until after December 31, 2002.
2. The Architectural Committee shall meet at least once each calendar month to consider applications with respect to any Exterior Structures that require the approval of the Architectural

Committee as provided in Article VIII above. Any application that is not acted upon by the Architectural Committee within 45 days of the date on which it is filed shall be deemed to have been approved. A majority of the members of the Architectural Committee shall constitute a quorum for the transaction of business at a meeting, and every act or decision made by a majority of the members present at a meeting which a quorum is present shall be regarded as the act or decision of the Architectural Committee.

3. At each meeting, the Architectural Committee shall consider and act upon applications that have been submitted to it decisions, the Architectural Committee may consider any and all aspects and factors that the committee members, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character, and aesthetics of the surrounding neighborhood, including, without limitation, the plans, specifications, exterior colors, material, location, elevation, landscaping, and use of the proposed Exterior Structure. All decisions of the Architectural Committee shall be in writing and delivered to the applicant who shall be responsible for keeping the same. The Architectural Committee may establish in advance and change from time to time certain guidelines and conditions that it intends to follow in making its decisions.

4. Any applicant who is dissatisfied with the decisions of the Architectural Committee shall have the right to appeal such decision to the Board, provided such appeal is filed in writing with a member of the Board within 15 days of the date the Architectural Committee renders its decision. Any decision rendered by the Board on appeal shall be final and conclusively binding on the applicant.

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

ARTICLE XV. NO LIABILITY FOR APPROVAL OR DISAPPROVAL

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

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

ARTICLE XVI. GENERAL EASEMENT AND RELEASE REGARDING GOLF COURSE PROPERTY

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

The Fee Owner hereby establishes for the benefit of the Golf Club a non-exclusive easement ("The Easement") over and across, and in the entire airspace above, all of the Servient

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Lots, for the purpose of the flight of golf balls through the air over the Servient Lots and the entry of golf balls upon and/or across the Servient Lots and any improvement constructed, or to be constructed, upon the Servient Lots.

2. Character of Easement.

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

3. Use of Easement

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

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

4. Term.

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

5. Waiver and Indemnification.

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

Furthermore, each such Owner shall indemnify, defend and hold harmless the Parties, and each of them, from and against any and all claims, demands, actions, suits, losses, liabilities, damages, costs and expenses (including actual attorneys' fees) (collectively, "Claims") arising from or related in any way whatsoever to (a) any use of the Easement over, above, across or in such Owner's Servient Lot, whether the Claim (s) is made or incurred by such Owner, any member of such Owner's family, any invitee of such Owner and/or any other person or (b) any use of the Easement over, above, across or

in any Servient Lot provided the Claim(s) is incurred by such Owner, a member of such Owner's family and/or an invitee of such Owner. Payment shall not be a condition precedent to recovery under the foregoing indemnification, and the obligation of each Owner to defend the Parties as set forth above shall be the obligation to defend with counsel approved by the indemnified Party. The obligations of such Owners hereunder shall run with the Servient Lots for the benefit of the Golf Club and shall be binding on all successive owners of any portion of the Servient Lots. Notwithstanding anything to the contrary herein, (i) nothing contained in this paragraph shall operate to relieve any Party for any Claim which is determined by a court of competent jurisdiction to have been solely and proximately caused by the intentional misconduct or gross negligence of such Party and (ii) the waiver and indemnification provisions of this paragraph shall not extend to the individual responsible for placing the golf ball in flight if such flight is the sole and proximate cause of the personal injury or property damage.

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

6. Buffers.

Without limiting the generality of the foregoing paragraphs of this declaration, each Owner understands and agrees that the Company and the owner(s), operator(s) and designer(s) of the Golf Club cannot install fences, trees and other buffers, or reconfigure or remodel the Golf Club, to hinder errant golf balls from entering such Owner's specific Lot, as such installations and remodeling may diminish the enjoyment of the Lots of other Owners or other property. Nothing herein contained shall be deemed to establish or grant a view easement or any other similar easement or right in favor of any Owner or any owner of other property near the Golf Club. The owner(s) and Operator(s) of the Golf Club may install fences, trees and other improvements on the Golf Club and remodel the Golf Club as and when they so desire.

7. Preferences.

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

8. Miscellaneous.

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

successors and assigns.

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

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

ARTICLE XVII. COVENANTS RUNNING WITH THE LAND; ENFORCEMENT

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

The Developer, its successors and assigns, and all other Owners of any of the Lots and Homes Association shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions, and reservations herein set forth in addition to any action at law for damages. The failure to enforce any of the agreements, restrictions, or reservations herein set forth at the time of its violation shall in no event be deemed to be a waiver of the right to do so thereafter.

ARTICLE XVIII. ASSIGNMENT OF DEVELOPMENT RIGHTS

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

ARTICLE XIX. SECURITY

Neither the Homes Association, the Developer, nor any successor thereof shall in any way be considered insurers or guarantors of security within the Falcon Valley 3rd Plat properties. The Homes Association, the Developer and all successors thereof do not represent or warrant that any fire

protection system, burglar alarm, system or other security system designated by or installed according to guidelines established by the Homes Association, the Developer or any successor thereof may not be compromised or circumvented, that any fire protection or burglar alarm systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise. Each Owner, guest, and invitee of any Owner assumes all risks for loss or damage to persons, to Unit and to the contents of said Unit.

ARTICLE XX. RELEASE OR MODIFICATION OF RESTRICTIONS

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

ARTICLE XXI. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing District and to the operation of the provisions of this Declaration such other adjacent (without reference to the Golf Course Property and streets) lands as it may now own or hereafter acquire by executing, acknowledging, and recording an appropriate written declaration or agreement subjecting such land to all or the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions, and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in good faith.

ARTICLE XXII. SEVERABILITY

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment, or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.

