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Title of Document: Amended and Restated Estates of Prairie Haven
Declaration of Restrictions

Date of Document: January 19, 2010

Grantor(s): Lone Elm Land Co., Inc.

Grantee(s): Public

Legal Description: Exhibit "A"

Reference Book and Page: 5354/390

**AMENDED AND RESTATED
ESTATES OF PRAIRIE HAVEN
DECLARATION OF RESTRICTIONS**

THIS AMENDED AND RESTATED DECLARATION is made as of the 19 day of January 2010, by Lone Elm Land Co., Inc., a Kansas Corporation.

WITNESSETH:

WHEREAS, Lone Elm Land Co., Inc. ("Developer"), has executed and filed with the Register of Deeds of Johnson County, Kansas plats of the subdivision known as "Estates of Prairie Haven"; and

WHEREAS, such plats create the subdivision of Estates of Prairie Haven, composed, in part, of the real property described on Exhibit "A" attached hereto ("Property"); and

WHEREAS, a document entitled "Estates of Prairie Haven Declaration of Restrictions" ("Declaration") was recorded in the Office of the Register of Deeds of Johnson County, Kansas on October 30, 1997 as Document 2757131, at Book 5354, Page 390, encumbering the Estates of Prairie Haven; and

WHEREAS, Developer wishes to amend and restate the Declaration as provided hereby; and

WHEREAS, Developer, along with the Olathe Haven Development Return, LLC, the owner of the real estate and improvements identified as:

All of lots 1-65, inclusive, and Tract A, Estates of Prairie Haven, Fourth Plat, a subdivision of land in City of Olathe, Johnson County, Kansas, according to the recorded plat thereof ("4th Plat")

desire to add the 4th Plat to the District covered by this Declaration, and thereafter be subject to this Declaration; and

WHEREAS, Developer, along with Haven Development VI, LLC, the owner of the real estate and improvements identified as:

All of lots 39-53, inclusive, Ranch Villas at Prairie Haven, a subdivision of land in City of Olathe, Johnson County, Kansas, according to the recorded plat thereof ("Ranch Villas")

desire to add the Ranch Villas to the District covered by this Declaration, and thereafter be subject to this Declaration.

NOW, THEREFORE, in consideration of the premises contained herein, Lone Elm Land Co. Inc., for itself and for its successors and assigns, and for its future grantees, and with

Olathe Haven Development Return, LLC and Haven Development VI, LLC hereby agrees and declares that all of the above-described lots shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth.

ARTICLE I. DEFINITIONS

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

1. "Architectural Committee", with respect to the District or any portion thereof as may be designated by the developer, means the Developer (or its designees from time to time) until the Certificate of Substantial Completion is recorded.
2. "Approving Party" means (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees from time to time) and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Homes Association (or with respect to Exterior Structures and other matters assigned to it, the Architectural Committee).
3. "Board" means the Board of Directors of the Homes Association.
4. "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 District (as then composed or contemplated by the Developer) have been sold by the Developer and the residence 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.
5. "City" means the City of Olathe, Kansas.
6. "Common Areas" 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, (ii) all landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the District, (iii) the Recreational Facilities, (iv) the Right of Way Amenities, and (v) 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 District, whether or not any "Common Area" is located on any Lot.
7. "Developer" means Lone Elm Land Co., Inc., a Kansas corporation and its successors and assigns.

8. "District" means collectively all of the above-described Lots, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.
9. "Exterior Structure" means 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, outbuilding, fence, patio wall, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court swimming pool, hot tub, pond, basketball goal, flag pole, swing set, trampoline, sand box, playhouse, tree house or other recreational or play structure, and all exterior sculptures, statuary, fountains, and similar yard decor.
10. "Homes Association" means Estates of Prairie Haven Area Homes Association a Kansas not-for-profit corporation formed by the Developer for the purpose of serving as the homes association for the District.
11. "Lot" means any lot as shown as a separate lot on any recorded plat of all of part of the District; provided, however, that if any 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 due 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 from time to time by Approving Party and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot,"
12. "Owner" means the record owner(s) of title to any Lot, including the Developer, and shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees.
13. "Recreational Facilities" has the meaning set forth below.
14. "Right of Way Amenities" has the meaning set forth below.

ARTICLE II. USE AND DEVELOPMENT

1. **Use of Land.** Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied for other than single family, private residential purposes. No trailer, outbuilding or Exterior Structure shall at any time be used for human habitation, temporarily or permanently; nor shall any residence of a temporary character be erected, moved onto or maintained upon any of the lots or any Common Areas or used for human habitation; provided, however, that nothing herein shall prevent the Developer or others (including, without limitation, builders and real estate sales agencies) authorized by the Developer from using temporary buildings or structures or any residence or clubhouse for model, office, sales or storage purposes during the development and building out of the District.

2. **Building Material Requirements.** Exterior walls of all residences and all appurtenances thereto shall be of stucco, stucco board or staccato, brick, stone, wood shingles, wood siding, batt siding, wood paneling, plate glass, glass blocks or any combination thereof, except as otherwise approved in writing by the Approving Party. All windows shall be constructed of glass, wood, metal clad, vinyl and wood laminate, or any combination thereof; provided, however, that storm windows may be constructed of wood, metal clad and laminate, colored metal (other than silver) and glass, or any combination thereof. Roof covering to be 25 year or better Timberline type material. Notwithstanding the foregoing provision of this Section requiring specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the area shall be acceptable upon written approval by the Approving Party. All wood exteriors, except roofs and shake side walls, shall be covered with a workmanlike finish of high quality paint or stain in colors approved by the Approving Party which are consistent with those in the neighborhood. No residence or Exterior Structure shall stand with its exterior in any unfinished condition for longer than twelve (12) months after commencement of construction. All exterior basement foundations and walls which are exposed in excess of twelve (12) inches above final grade shall be painted the same color as the residence or covered with siding compatible with the structure. No air conditioning apparatus or unsightly projection shall be attached or affixed to the front of any residence.
3. **Minimum Floor Area.** No residence shall be constructed upon any Lot unless it has a total finished floor area of at least one thousand two hundred (1,200) square feet, excluding any finished attics, garages, basements and similar habitable areas the Approving Party, in its discretion, may allow variances from the minimum square footage requirements.
4. **Approval of Plans, Post-Construction Changes; Grading.**
 - 4.1. Except for any Lots in the 4th Plat upon which a finished home has not been constructed and occupied as a residence notwithstanding compliance with the other provisions hereof, no residence, Exterior Structure or other structure may be erected upon or moved onto any Lot unless and until the building plans, specification, exterior materials, location, elevations, lot grading plans, general landscaping plans, and exterior color scheme, have been submitted to and approved in writing by the Approving Party or, in the case of change or alteration in such building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the Approving Party or the Architectural Committee, as the case may be. All building plans and plot plans shall be designed to minimize the removal or existing trees and shall designate those trees to be removed.

- 4.2. Following the completion of construction of any residence or Exterior Structure, no significant landscaping change, significant exterior color change or exterior addition or alteration shall be made thereto unless and until the change, addition or alteration has been submitted to and approved in writing by the Architectural Committee. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Architectural Committee.
- 4.3. All final grading of each Lot shall be in accordance with the master grading approved by the City any related grading plan furnished by the Developer for the development phase containing the Lot and any specific site grading plan for the Lot approved by the Approving Party. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. All sump pumps shall be drained away from adjacent residences (actual and future). No change in the final grading of any Lot shall be made without the prior written approval of the Approving Party and, if necessary, the City. The Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the Master grading plan or any approved lot grading plan or for the Developer not requiring a lot grading plan and compliance therewith. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots that the Developer may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.
- 4.4. **Set Backs.** No residence, or any part thereof (exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections), or Exterior Structure, or any part thereof, shall be nearer the street line than the building set back lines shown on the recorded plat for such Lot; provided, however, that the Approving Party shall have the right to decrease, from time to time and in its absolute discretion, the set back lines for a specific Lot, to the extent they are greater than the minimum set-backs required by the City, by filing an appropriate instrument in writing in the office of the Register of Deeds of Johnson County, Kansas.
- 4.5. **Commencement and Completion of Construction.** Unless the following time periods are expressly extended by the Approving Party in writing, and not including any Lots in the 4th Plat upon which a finished home has not been constructed and occupied as a residence, construction of the residence on a Lot shall be commenced within six (6) months following the date of delivery of a deed from the Developer to the purchaser of such Lot and shall be completed within six (6) months after such commencement. In the event such construction is not commenced within such six (6) month period (or extension thereof, if any), the Developer shall have, prior to commencement of construction, the right (but

not the obligation) to repurchase such Lot from such purchaser at its original sale price. 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 any other expense paid or incurred, including attorney fees, by or for such Owner.

ARTICLE III. ARCHITECTURAL COMMITTEE

1. The Architectural Committee shall be comprised of no less than three (3) and no more than seven (7) persons. No more than two (2) members of the Board shall serve on the Architectural Committee at any time. The positions on the Architectural Committee may be divided by the Board into two (2) classes with staggered 2-year terms. No member of the Architectural Committee shall serve in such position for more than forty-eight (48) months during any five (5) year period. Until such time as the Certificate of Substantial Completion is filed, the Developer shall have final and controlling authority of all decisions to be made by the Architectural Committee.
2. The Architectural Committee shall meet as necessary to consider applications with respect to any matter that require the approval of the Architectural Committee within the authority of the Architectural Committee as provided in this Declaration. Any written application complete with appropriate drawings and other information that is not acted upon by the Architectural Committee within thirty-five (35) days after 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 at 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 written and complete applications that have been submitted to it for approval in accordance with this Declaration. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the individual members of the Architectural Committee, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the district, including without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. All decisions of the Architectural Committee shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Architectural Committee may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions.
4. Any applicant or other person who is dissatisfied with a decision of the Architectural Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven days after the date of Architectural committee renders its written decision. In making its decisions, the Board

may consider any and all aspects and factors that the individual members of the Board, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the District, including without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading, plans, landscaping, plans and use of any proposed Exterior Structure. Any decision rendered by the Board on appeal of a decision of the Architectural Committee shall be final and conclusively binding on all parties. The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Architectural Committee, including, without limitation, requiring payment of a reasonable fee by the appealing party.

5. The Architectural Committee shall have no power or authority with regard to new construction on the Lots by any Developer or builder.
6. Neither the Developer, nor the Homes Association, nor any member of the Architectural Committee or the Board shall be personally liable to any person for any approval, disapproval or failure to approve or disapprove of any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions or guidelines.

ARTICLE IV. EXTERIOR STRUCTURES AND MISCELLANEOUS RESTRICTIONS

No exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) strictly in accordance with and pursuant to the prior written approval of the Architectural Committee as to the applicable building plans, specifications, exterior materials, location, elevations, lot grading plans, landscaping plans and exterior color scheme and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below or elsewhere in this Declaration; except, however, as to any Lots in the 4th Plat upon which a finished home has not been constructed and occupied as a residence; and further provided, however, that the approval of the Architectural Committee shall not be required for (i) any Exterior Structure erected by or at the request of the Developer or (ii) any Exterior Structure that (A) has been specifically approved by the Developer prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the Developer and (B) has been built in accordance with such approved plans.

1. All fences, boundary walls and privacy screens shall be ornamental and shall not disfigure the property or the neighborhood. All fences and privacy screens shall be constructed with the finished side out. All fences and privacy screens shall be constructed of cedar wood or wrought iron or composite wood and in standard styles approved by the Approving Party. No chain link, wire or similar fence or privacy screen shall be permitted. Unless and until otherwise specifically approved in writing by the Approving Party, (i) no fence, boundary wall or privacy screen shall exceed six (6) feet in height, (ii) no fence, boundary wall or privacy screen shall be constructed or maintained on any Lot nearer to the street than the rear corners (as defined by the Approving Party) of the Lot

more than one foot from the property line of the Lot, except to the extent necessary for such fence or wall to abut the residence, (iii) all fences and boundary walls must be joined to any previously existing fences or boundary walls on adjacent Lots, and (iv) no fence or boundary wall (other than one erected by or for the City or the Approving Party) shall be permitted in any Common Area on or near the common property line.

2. All basketball goals shall be free standing and not attached to the residence. All backboards shall be transparent or painted white and all poles shall be a neutral color. There shall be only one basketball goal per Lot. The Board shall have the right to establish reasonable rules regarding the house of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.
3. All recreational or play structures, other than basketball goals, shall be located behind the back building line of the residence.
4. No swimming pool of any kind, type, or nature, including, but not limited to spas, hot tubs, wading pools, or lap pools, on any lot within the District, may be constructed in or installed without prior written approval of the Approving Party. All approved swimming pools or similarly approved facilities shall be fenced or otherwise adequately screened. All approved pools and other similarly approved facilities shall be kept clean and maintained in operable condition. In no event shall any above-ground type or above grade swimming pools shall be permitted. All pools and hot tubs shall be kept clean and maintained in operable condition at all times.
5. All outside doghouses shall be located in the back yard, 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 other animal shelters or runs shall be permitted.
6. No fence, boundary wall or other Exterior Structure installed by or for the Approving Party anywhere in the District may be removed or altered by any owner or other person without the prior written consent of the Approving Party.
7. Except as otherwise provided herein, no residence or Exterior Structure, or any portion thereof, shall ever be place, 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.
8. No noxious or offensive activity shall be carried on with respect to any Lot.
9. No grass clippings, trash, ashes or other refuse shall 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 District, or any part thereof. 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.

10. Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.
11. Overnight parking of motor vehicles of any type or character in public streets, Common Areas or vacant lots is prohibited. Motor vehicles shall be parked overnight in garages or on paved driveways only or city streets if parking is allowed by the city.
12. Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited in the District except during such times as such truck is actually being used for the specific purpose for which it is designed.
13. Recreational motor vehicles of any type or character are prohibited except:
 - 13.1. Storing in an enclosed garage;
 - 13.2. Temporary parking for the purpose of loading and unloading (maximum of one consecutive night); or
 - 13.3. With prior written approval of the Approving Party.
14. Except as provided herein, no vehicle (other than a passenger automobile or van), truck, bus, boat, trailer, camper or similar apparatus shall be left or stored over night on any Lot, except in an enclosed garage.
15. No television, radio, citizens' band, short wave or other antenna, satellite dish (other than as provided below), solar panel, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or Exterior Structure or erected in any yard. 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, 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 District, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots. Notwithstanding any provision in this Declaration to the contrary, a maximum of two (2) small satellite dishes may be installed on the exterior of a residence or in a yard on the Lots with the prior written consent of the Approving Party. The Approving Party shall have the right to establish rules and regulations binding upon all of the Lots and specific requirements for each Lot, regarding the location, size, landscaping and other aesthetic aspects of such small satellite dishes so as to control the impact thereof on the District, and all parts thereof.
16. No lights or other illumination, other than street lights, shall be higher than the residence.
17. No more than once (1) per year may any Owner hold any garage sale, sample sale or similar activities within the District without the prior written consent of the Homes Association.
18. No speaker, horn, whistle, siren, bell or other sound device, shall be located, installed or maintained upon the exterior of any residence or in any yard, except intercoms, devices

used exclusively for security purposes, and stereo speakers used in accordance with rules specified by the Board.

19. All residential service utilities shall be underground, except with the prior written approval of the Approving Party.
20. In the event of vandalism, fire, windstorm or other damage, no residence or Exterior Structure shall be permitted to remain in damaged condition for longer than three (3) months.
21. No detached shed, barn, garage or other storage facility shall be erected upon, moved onto or maintained upon any Lot. Storage shall be permitted under a deck, provided such area is fenced or otherwise screened as authorized herein, or attached to a residence, provided it attached to the first level of the residence and is painted the same color as the rest of the residence, unless approved by Approving Party and meets City requirements.
22. No outside or underground fuel storage tanks of any kind shall be permitted except as attached to an outdoor grill.
23. No driveway shall be constructed in a manner as to permit access to a rear lot line
24. No sign, advertisement or billboard may be erected or maintained on any Lot except:
 - 24.1. One sign not more than three (3) feet high or three (3) feet wide, not to exceed a total of six (6) square feet, may be maintained offering the residence for sale or lease.
 - 24.2. One garage sale sign not more than three (3) feet high or three feet wide, not to exceed a total of five (5) square feet, is permitted on the Lot when the sale is being held, provided such signs are removed within twenty-four (24) hours after the close of the sale.
 - 24.3. One (1) political sign per candidate or issue not more than three (3) feet high or three (3) feet wide, not to exceed a total of six (6) square feet, is permitted for up to three (3) weeks before the election but must be removed within twenty-four (24) hours after the election.
25. No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a residence except after sundown of the day before or upon the day for regularly scheduled trash collection.
26. No animals, livestock or poultry of any kind shall be raised, bred, kept or maintained on any Lot except that a maximum of two (2) dogs, two (2) cats and a reasonable number of other common household pets may be raised, bred, kept or maintained so long as (a) they are not raised, bred, kept or maintained for commercial purposes, (b) they do not constitute a nuisance and (c) the City ordinances and other applicable laws are satisfied.

All pets shall be confined to the Lot of the Owner except when on a leash controlled by a responsible person. Owners shall immediately clean up after their pets on all streets, Common Areas and Lots owned by others.

27. Prior to occupancy, and in all events within five (5) months after commencement of construction of the residence, all lawns, including all areas between each residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right of way line, shall be fully sodded in the front yard and shall remain sodded at all times thereafter; provided, however that the Owner of a Lot may leave or subsequently create a portion of the Lot as a natural area with express written permission of the Approving Party. No lawn shall be planted with zoysia or buffalo grass. Prior to occupancy, and in all events within five (5) 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, minimally consisting of shrubs on all sides that face to a public roadway and one tree in the front of the residence, and in accordance with the plans approved by the Developer. To the extent any of the foregoing items are not completed prior to occupancy, the Owner shall escrow funds, in an amount and manner determined by the Developer, to assure such installation when weather permits.
28. All vegetable gardens, both as to size, location, and types of vegetables grown must be approved in writing by the Approving Party prior to their planting and shall be located in the back yard of any Lot within the District and behind the rear building line or any residence constructed thereon and at least five (5) feet away from the boundary of the Lot. No vegetable garden(s) shall exceed one hundred (100) square feet in size on any Lot except with the prior written consent of the Approving Party. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a length of grass not to exceed four (4) inches and shall properly maintain and replace all trees and landscaping (excluding those in a Common Area maintained by the Homes Association).

ARTICLE V. 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 location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights-of-way or easements therefore, over, under, upon and through all easements and rights-of-way shown on any 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 and the Homes Association as a cross easement for utility line or service maintenance.

The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through all

unimproved portions of each Lot in the District for the purpose of performing the duties of the Homes Association and maintaining any Common Area.

ARTICLE VI. COMMON AREAS

1. The Developer and its successors, assigns, and grantees, as Owners, and the Homes Association shall have the right and easement of enjoyment in and to all of the common Areas, but only for the intended and permitted use of such Common Areas. Such right and easement in favor of the Owners shall be Appurtenant to, and shall automatically pass with, the title to each Lot. All Such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.
2. The Developer covenants and agrees to 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 District) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its discretion, may determine, but in all events not later than one (1) 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 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 the Developer or the Homes Association), subject to any control there over 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 District, pursuant to this Declaration or any other instruments, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.
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, pipeline, maintenance, electric, telephone, television and other utility easements over, under, upon and through such Common Area, as provided in this document.
4. No Owner shall improve, destroy or otherwise alter or modify any Common Area without the express written consent of the Approving Party.
5. Subject to the foregoing, the Developer and the Homes Association shall have the right from time to time to make, alter, revoke and enforce additional rules and regulations and restrictions pertaining to the use of any Common Area.

ARTICLE VII. ASSIGNMENT OF RIGHTS OF DEVELOPER

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

ARTICLE VIII. RELEASE, AMENDMENT OR MODIFICATION OF RESTRICTIONS

1. The provision of this Declaration shall remain in full force and effect until December 31, 2025, and shall automatically be continued thereafter for successive periods of five (5) years each; provided, however, that the Owners of at least two-thirds (2/3) of the Lots within the District as then constituted may release the District, or any part thereof, from all or part of such provisions as of December 31, 2025, 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 December 31, 2025, 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 (i) the Owners of at least two thirds (2/3) of the Lots within the District as then constituted and (ii) if prior to the recording of the Certificate of Substantial Completion, the Developer. The foregoing notwithstanding, this Declaration may not be amended with regard to any Lots in the 4th Plat without the approval of at least two-thirds (2/3) of the Owners of such Lots.
2. Anything set forth in this Section 18 to the contrary notwithstanding, 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, all as from time to time amended or supplemented, in 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 District or any part of the District or any Lot in the District, for federally-approved mortgage financing purposes under applicable Veteran's Administration or Federal Housing Administration or similar programs, laws and regulations.
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 individuals signing this Declaration on behalf of the Developer as of the date of such execution.

ARTICLE IX. 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 or nearby (without reference to any street, golf course, park or right-of-way) 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 of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in its discretion.

ARTICLE X. MISCELLANEOUS

1. The Developer, for itself and all future grantees of any of the Lots, and their successors and assigns, hereby:
 - 1.1. waives any and all claims or causes of action against the City or any other party, for or relating to escrows paid (including interest thereon) to the City, special assessments levied against any portion of the Lots, or thoroughfare right-of-way dedicated or condemned for any adjacent road from any plat containing the Lots or otherwise condemned for any adjacent road, in any such case for thoroughfare construction with respect to any of the Lots or the platting thereof; and
 - 1.2. waives any right to institute any proceeding against the City or any other party for any claim or cause of action for damages, injunctive relief, refund, expenses or injury to persons or property arising out of the payment of money or the dedication of any right-of-way pursuant to any Interim Unilateral Development Agreement between the Developer (or any prior owner of the land now constituting the Lots) and the City or arising out of compliance by any party with any of the terms and conditions of such Interim Unilateral Development Agreement.
2. By acquiring an interest in or to any Lot in the District, such person or entity hereby waives any and all claims or causes of action against Developer, Haven Development VI, LLC, or any officer, director, representative or agent thereof, from and against any action or inaction of them with regard to this Declaration, including but not limited to any right, duty or obligation as contained herein.
3. 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 XI.**ARTICLE XII. COVENANTS RUNNING WITH THE LAND; ENFORCEMENT**

1. The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the District. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither the Developer, the Homes Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Lot owned by such Owner. No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during his ownership; provided, however, that (i) 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 and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Lot to the extent notice of such breach was filed or record, as provided in the third paragraph of this Section prior to the transfer of ownership.
2. The Developer, the Homes Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions, reservations and other provisions herein set forth, in addition to any action at law for damages. To the extent permitted by law, if the Developer or the Homes Association shall be successful in obtaining a judgment or consent decree in any such court action, the Developer and/or Homes Association shall be entitled to receive from the breaching party as part of the judgment or decree the legal fees and expenses incurred by the moving party with respect to such action.
3. Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer or the Homes Association may file with the office of the Register of Deeds of Johnson County, Kansas a certificate setting forth public notice of the nature of the breach and the Lot involved.
4. No delay or failure by any person or entity to exercise any of its right or remedies with respect to a violation of this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be constructed as a waiver of that or any other violation. No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered

waiver by the Homes Association respecting a specific violation shall constitute and be deemed as a waiver of such violation by all other persons and entities (other than the Developer).


IN WITNESS WHEREOF, the Developer, Olathe Haven Development Return, LLC, and Haven Development VI, LLC have caused this Declaration to be duly executed the day and year first above written.

LONE ELM LAND CO., INC.

By 
VICTOR A. APPLEBAUM
President

OLATHE HAVEN DEVELOPMENT RETURN, LLC

By Master Control, L LC, its Managing Member
By Bank Midwest, N.A., its Managing Member

By 
WALTER C. CORBELLO
Sr. Vice President

HAVEN DEVELOPMENT VI, LLC

By 
VICTOR A. APPLEBAUM
Managing Member

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Before me, a Notary Public, in and for said county and state, personally appeared **VICTOR A. APPLEBAUM**, President of **LONE ELM LAND CO., INC.**, a Kansas corporation, which person is personally known to me known to me to be such officer as herein

above described, and who is personally known to me to be the same person who executed, as such officer, the within instrument, and acknowledged that he executed the same as the free act and voluntary deed of said corporation.

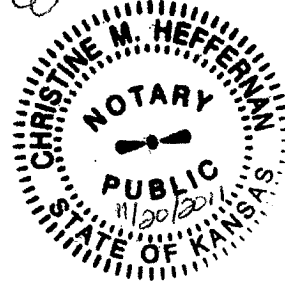
IN WITNESS WHEREOF, I have hereunto set my hand and affixed seal this 19 day of January 2010.

Christine M. Heffernan

Notary Public

My Commission Expires:

11/20/2011



STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Before me, a Notary Public, in and for said county and state, personally appeared **WALTER C. CORBELLO**, Sr. Vice President of Bank Midwest, N.A., managing member of Master Control, L LC, the managing member of **OLATHE HAVEN DEVELOPMENT RETURN, LLC.**, a Missouri limited liability company, which person is personally known to me known to me to be such officer as herein above described, and who is personally known to me to be the same person who executed, as such officer, the within instrument, and acknowledged that he executed the same as the free act and voluntary deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed seal this 19th day of January 2010.

Anita L. Kjelleron

Notary Public

My Commission Expires:

9/16/13

ANITA L. KJELLERSON
Notary Public-Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires Sept. 16, 2013
Commission # 09401755

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Before me, a Notary Public, in and for said county and state, personally appeared **VICTOR A. APPLEBAUM**, managing member of **HAVEN DEVELOPMENT VI, LLC.**, a

Kansas limited liability company, which person is personally known to me known to me to be such officer as herein above described, and who is personally known to me to be the same person who executed, as such officer, the within instrument, and acknowledged that he executed the same as the free act and voluntary deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed seal this 19 day of January 2010.

Christine M. Heffernan
Notary Public

My Commission Expires:

11/20/2011

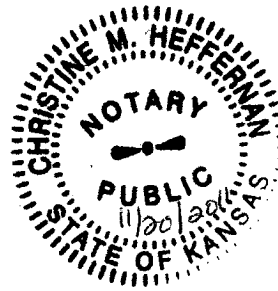


EXHIBIT A

All of lots 1 through 99, inclusive, and Tract A, except Lot 59, Estates of Prairie Haven, First Plat, a subdivision of land in City of Olathe, Johnson County, Kansas, according to the recorded plat thereof.

All of lots 100 through 121, inclusive, 126 through 132, inclusive, 172, 173, 182 through 188, inclusive, and Tract A, Estates of Prairie Haven, Second Plat, a subdivision of land in City of Olathe, Johnson County, Kansas, according to the recorded plat thereof.

All of lots 100 through 142, inclusive, and Tracts A, B and C, Estates of Prairie Haven, Third Plat, a subdivision of land in City of Olathe, Johnson County, Kansas, according to the recorded plat thereof.

All of lots 1-65, inclusive, and Tract A, Estates of Prairie Haven, Fourth Plat, a subdivision of land in City of Olathe, Johnson County, Kansas, according to the recorded plat thereof.

All of Lots 39-53, Ranch Villas at Prairie Haven, a subdivision of land in City of Olathe, Johnson County, Kansas, according to the recorded plat thereof.