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BOULDER CREEK
HOMES ASSOCIATION DECLARATION

THIS DECLARATION is made as of the 3rd day of April, 2017, by Day3 Development, LLC, a Missouri limited liability company ("**Developer**").

WITNESSETH:

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

> Lots 1 through 43, and Tracts B, C, D, E and F, Boulder Creek, First Plat, a subdivision in the City of Olathe, Johnson County, Kansas.

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

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

ARTICLE I
DEFINITIONS

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

(a) "**Assessment**" means each annual assessment, special assessment, initiation assessment, monetary fine, late fee, interest, lien fee and other amount levied by the Homes Association against a Lot or otherwise payable by an Owner of a Lot to the

Homes Association in accordance with this Declaration or the Bylaws of the Homes Association.

(b) "**Board**" means the Board of Directors of the Homes Association.

(c) "**Certificate of Substantial Completion**" means a certificate executed, acknowledged and recorded by the Developer with the Recording Office stating that all of the Lots in the Subdivision (as then 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 Developer's absolute discretion at any earlier time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

(d) "**City**" means the City of Olathe, Kansas.

(e) "**Common Areas**" means (i) Tracts B, C, D, E, and F, of Boulder Creek and all improvements thereon, (ii) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the Subdivision, (iii) all platted landscape easements and all other easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the Subdivision, and (iv) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the Subdivision.

(f) "**Declaration**" means this instrument, as the same may be amended, supplemented or modified from time to time.

(g) "**Developer**" means Day3 Development, LLC, a Missouri limited liability company, and its successors and assigns.

(h) "**Exempt Lot**" means (i) any Lot owned by the Developer, (ii) any Lot owned by a homebuilder entity prior to the commencement of occupancy of a residence thereon as a residence, and (iii) any Lot owned by any other party prior to the issuance of a certificate of occupancy (temporary or permanent) for the residence on such Lot.

(i) "**Homes Association**" means the Kansas non-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision.

(j) "**Lot**" means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision; provided, however, that if an Owner, other than the Developer,

owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the voting rights and the amount of periodic 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 in writing by the Developer, and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot."

(k) "**Owner**" means the record owner(s) of title to any Lot, including the Developer.

(l) "**Pool Area**" has the meaning set forth in Article VIII below.

(m) "**Recording Office**" means the Office of the Register of Deeds of Johnson County, Kansas or such other governmental office in which deeds, mortgages and other instruments relating to real property in Johnson County, Kansas are to be recorded to give public notice thereof.

(n) "**Stream Corridor Maintenance Agreement**" means the Stream Corridor Maintenance Agreement between the City and Developer (as "**Property Owner**" under such agreement) relating to the ownership and maintenance of a natural stream corridor, as recorded in the Recording Office. The Homes Association becomes the "Property Owner" under such agreement once the Homes Association becomes the owner of the applicable property described therein.

(o) "**Subdivision**" means collectively all of the above Lots in Boulder Creek, all Common Areas, and all additional property (if any) which hereafter may be made subject to this Declaration in the manner provided herein.

(p) "**Turnover Date**" means the earlier of: (i) the date as of which 95% of all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences have been constructed thereon, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

ARTICLE II
HOMES ASSOCIATION MEMBERSHIP AND BOARD

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (c) of Section 4.2 of Article IV below and to vote on any special assessments as provided in clause (III) of Section 5.1(b) of Article V below.

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

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members, and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot.

To the extent permitted by law, during any period in which a member is in default in the payment of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

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

The Board initially shall be the one or more persons named as the initial director(s) pursuant to the provisions of the Articles of Incorporation of the Homes Association, or such other person or persons as may from time to time be substituted by the Developer. As soon as possible after the Turnover Date, the Developer shall appoint replacement directors from among the Owners or, at the discretion of the Developer, the Homes Association shall hold a meeting of its members and the Owners shall elect directors to replace all of those directors earlier designated by the Developer. Notwithstanding the foregoing, the Developer shall have the right at any time to waive its right to designate one or more directors or to vote in an election of directors.

ARTICLE III
POWERS AND DUTIES OF THE HOMES ASSOCIATION

3.1 In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the Subdivision; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Developer, the Homes Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth or otherwise by law. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To own, lease and otherwise deal with real property and personal property.

(c) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(d) To maintain public liability, worker's compensation, fidelity, property coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association, the Common Areas and the property within the Subdivision.

(e) To levy the Assessments and other charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such Assessments and related charges.

(f) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer or other parties and the Homes Association and its members, and the sharing of the expenses associated therewith.

(g) To enter into and perform agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the Subdivision, and the sharing of expenses associated therewith.

(h) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operating and maintaining Common Areas, and planning and coordination of activities.

(i) To engage the services of a security guard or security patrol service.

(j) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Subdivision; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Subdivision neat in appearance and in good order.

(k) To exercise any architectural, aesthetic or other control and authority given and assigned to the Homes Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Subdivision.

(l) In accordance with applicable law, to adopt reasonable rules, regulations, restrictions, policies, guidelines, and procedures, including, without limitation, the establishment and imposition of monetary fines, regarding (i) the use of the Common Areas and the personal conduct of the members and their guests thereon, (ii) the

implementation of provisions set forth in this Declaration or in any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof), (iii) the establishment and enforcement of construction and design criteria and aesthetic standards, or (iv) the regulation of behavior which violates this Declaration or any other applicable recorded declaration or document applicable to the Subdivision (or any part thereof) or which adversely affects the use and enjoyment of other properties or the Common Areas.

(m) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.

3.2 In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to all Owners within the Subdivision (subject to the Homes Association having adequate funds to pay the costs thereof):

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the normal collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences). The Homes Association, however, shall not be obligated to provide or pay for any recycling services, except where required by law.

(b) The Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas, subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

(c) The Homes Association shall satisfy its obligations with respect to any Pool Area, as set forth in Article VIII below.

(d) The Homes Association shall maintain (once initially installed by the Developer) in accordance with the applicable requirements of the Olathe Municipal Code and all other applicable laws, plat stipulations, deed restrictions and/or easements, any storm water quality and quantity improvements required by the City to be installed by the Developer in connection with the development of the Subdivision, which improvements will generally consist of native vegetation areas, as such as general shown on the drawing attached hereto as Exhibit A and incorporated herein by reference.

(e) The Homes Association shall comply, in a full and timely manner, with its obligations under the Stream Corridor Maintenance Agreement.

3.3 The Board, in its discretion, may cause the Homes Association to provide other services for the Lots that are not part of the required services described above. The Board shall have the right to determine the scope and timing of the required and discretionary services to be provided by the Homes Association, and shall have the right (but not the obligation) to establish,

maintain and expend reserve funds for the improvements on the Common Areas and the services to be provided by the Homes Association. Neither the Developer, the Homes Association, nor any of their officers, directors, managers, representatives or agents shall be liable to any Owner or other party for any failure to establish or maintain any such reserves or if any such reserves are inadequate.

ARTICLE IV
ANNUAL ASSESSMENTS AND INITIATION FEE

4.1 For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision, other than Exempt Lots, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV. The amount of such annual assessment per Lot shall be fixed periodically by the Board, subject to Section 4.2 below, and, until further action of the Board, shall be $600.00 per year; provided, however, that if and when the swimming pool portion of the Pool Area contemplated in Article XIII below is substantially completed and ready for use (as determined by the Developer), such annual amount shall automatically increase by $150.00.

4.2 The rate of annual assessment upon each assessable Lot in the Subdivision may be increased:

(a) By the Board from time to time, without a vote of the members, by up to 20% over the rate of annual assessment in effect for the preceding year for each of 2018 through 2020;

(b) After 2020, by the Board from time to time, without a vote of the members, by up to 10% over the rate of annual assessment in effect for the preceding year; or

(c) At any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when the members present at such meeting (in person or by proxy, or, if applicable, by absentee ballot) and entitled to vote thereon authorize such increase by a majority vote of such voting members.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 3.2 of Article III above.

4.3 The annual assessments provided for herein shall be based upon the calendar year (commencing in 2017) and shall be due and payable on January 1st of each year; provided, however, that:

(a) The first assessment for each Lot shall be due and payable only upon the Lot ceasing to be an Exempt Lot and shall be prorated as of the date thereof (with an adjustment to reflect a proper portion of the dues associated with the costs of the Pool Area for the remainder of the year, as determined by the Board); and

(b) Any increase that occurs under the proviso in Section 1 above shall be effective as of the date such swimming pool is substantially completed and ready for use (with an adjustment to reflect a proper portion associated with the costs of the Pool Area for the remainder of the year, as determined by the Developer).

If the effective date of any increase in the rate of assessment is other than January 1st, a proper portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Lot or its Owner shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect to the Lot.

4.4 An initiation fee in an amount equal to 0.125% of the sale price (lot plus improvements) shall be payable by the new Owner to the Homes Association, for use as part of the general funds of the Homes Association, upon each of the following events with respect to the applicable Lot:

(a) The initial occupancy of the residence on the Lot as a residence after the residence is constructed (which initiation fee is in addition to the first regular annual assessment, as it may be prorated); and

(b) Each subsequent transfer of ownership of the Lot for value.

ARTICLE V
SPECIAL ASSESSMENTS

5.1 In addition to the annual assessments provided for herein, the Board:

(a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent (I) a monetary fine has been assessed by the Homes Association against the Owner or (II) the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate (by enforcement, self-help or otherwise) any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot; and

(b) shall levy from time to time special assessments against each and every Lot (other than Exempt Lots) in an equal amount that is sufficient, when aggregated with any funds voluntarily contributed or loaned by the Developer to the Homes Association, to enable the Homes Association (I) to perform its duties, as specified in Section 3.2 of Article III above, that require any expenditure during any period in an amount in excess of the general and applicable reserve funds of the Homes Association available therefor,

(II) to pay the costs of any emergency expenditures deemed necessary by the Board and (III) to pay the costs of any capital improvements approved by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the votes of the members present at such meeting (in person, by proxy or (if applicable) by absentee ballot) and entitled to vote thereon authorize such special assessment for the proposed capital expenditure by an affirmative vote.

5.2 In the event an Owner fails properly to maintain, repair, repaint, or replace any improvements on the Owner's Lot, the Homes Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair, repainting, or replacement, may enter onto the Lot and perform such maintenance, repair, repainting, or replacement. The Homes Association's costs thereof, plus a reasonable overhead and supervisory fee, shall be payable by the Owner of the Lot and shall be a special assessment against the Owner and the Owner's Lot.

5.3 If any Owner (other than the Developer) commences a lawsuit or files a counterclaim or crossclaim against the Homes Association, the Board of Directors, or any committee, or any individual director, officer or committee member of the Homes Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Homes Association, Board of Directors, committee, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees and court costs. Such recovery right shall constitute a special assessment against the Owner and the Owner's Lot.

5.4 Each special assessment shall be due and payable by the Owner of the Lot upon the Homes Association giving written notice of the special assessment to the Owner of the Lot, shall be a lien on the Lot until paid in full, and shall be enforceable as provided in this Declaration.

ARTICLE VI
DELINQUENT ASSESSMENTS

6.1 Each Assessment regarding a Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the Assessment becomes due. Should any Owner fail to pay any Assessment with respect to the Owner's Lot in full within 30 days after the due date thereof, then such Assessment shall be delinquent, the Owner shall be charged a late fee of the greater of $25.00 or 5% of the unpaid amount, and the unpaid amount shall bear interest at the rate of 10% per annum, compounded monthly (or, if lower, the maximum rate permitted by law) from the delinquency date until paid, which late fee and interest shall become part of the delinquent Assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any Assessment hereunder, all costs of collecting such Assessment, including, without limitation, court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the Assessment being collected and the lien on the Lot. Each Assessment, together with late fees, interest thereon and collection costs, shall also be the

personal obligation of the Owner(s) of the Lot, jointly and severally, at the time when the Assessment became due.

6.2 Payment of a delinquent Assessment with respect to a Lot may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including, without limitation, through lien foreclosure proceedings similar to a foreclosure under a mortgage lien in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of Assessments in the Recording Office, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any Assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of $200.00, which fee shall be added to the amount of the delinquent Assessment and the lien on the Lot and which fee amount may be increased by the Board from time to time to reflect cumulative increases in an appropriate consumer price index (as selected by the Board) after December 31, 2017.

6.3 Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period a lawsuit shall have been instituted for collection of the Assessment, in which case the lien shall continue until payment in full or termination of the lawsuit and sale of the property under the execution of judgment establishing the same.

6.4 To the extent permitted by law, the Homes Association may cease to provide any or all of the services (including, without limitation, use of Common Areas and trash services, if provided by the Homes Association) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an Assessment due under this Declaration, and no such cessation of use privileges or services shall result in a reduction of any amount due from or in any credit or restitution due to the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any Assessment by not using any Common Areas or by declining any services provided through the Homes Association.

6.5 No claim of the Homes Association for Assessments and charges shall be subject to setoffs or counterclaims made by any Owner. To the extent permitted by law, each Owner hereby waives the benefit of any redemption, homestead and exemption laws now or hereafter in effect, with respect to the liens created pursuant to this Declaration.

6.6 Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Lots, the Common Areas, and the Subdivision, and are necessary for the continued provision of services. Accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

ARTICLE VII
LIMITATION ON EXPENDITURES

Except for matters contemplated in Section 3.2 of Article III above, the Homes Association shall at no time expend more money within any one year than the total amount of the Assessments for that particular year, plus any surplus and applicable reserves which it may have on hand from prior years, plus any funds voluntarily contributed or loaned to the Homes Association by the Developer. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the Assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 3.2 of Article III above. The Developer shall have no obligation to contribute or loan any funds to the Homes Association.

ARTICLE VIII
COMMON AREAS

8.1 The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot, cabana and/or other recreational facilities ("**Pool Area**") in a place within the Subdivision and to make such facilities available for use by residents of the Subdivision. The size, location, nature and extent of the improvements and landscaping of the Pool Area, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

8.2 If the Pool Area is so constructed and made available for use by residents of the Subdivision, the following shall apply:

(a) Following substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of all mortgages, security interests, and mechanic's liens, title to the Pool Area (or the completed portion thereof) to the Homes Association. Such title transfer shall be by special warranty deed. The Developer shall not be required to provide the Homes Association with any title insurance policy for the Pool Area. The Homes Association shall cause adequate property and liability insurance to be continuously maintained on the Pool Area and, so long as Developer owns any Lots in the Subdivision, cause the Developer to be named as an additional insured on such insurance coverage.

(b) The Homes Association shall pay (i) all operating expenses (as defined below) and (ii) all post construction capital expenditures (as defined below) relating to the Pool Area. The Homes Association shall pay the amounts due from it under this subsection out of the Assessments collected from the Owners of the Lots in accordance with this Declaration.

(c) For purposes hereof, the "**operating expenses**" of the Pool Area generally has the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring,

developing, improving, constructing or erecting the Pool Area or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, or (iii) any financing or debt service expenses related to the costs described in clause (i) above.

(d) For purposes hereof, "**post construction capital expenditures**" means any expenditures to be made or incurred after the initial completion (as specified by the Developer) of the Pool Area for equipment, furniture, or other capital assets, including the expansion, addition or replacement of any equipment or facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied. All post construction capital expenditures shall be made by and at the discretion of the Homes Association.

(e) **By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with use of a swimming pool and any diving board and/or slide and any playground and other equipment that may be installed as part of the Common Areas. The Developer and the Homes Association and their respective officers, directors, managers, representatives and agents shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards. To the maximum extent required by law, each Owner, for himself, the members of his family, his guests and invitees, shall be deemed to have released and agreed never to make a claim against the Developer or the Homes Association or any of their respective officers, directors, managers, representatives or agents for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with use of the Common Areas, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.**

8.3 Subject to Section 8.2 above and Section 8.5 below, 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 solely a landscape easement or is within any Lot or outside of the Subdivision) to the Homes Association, without any charge to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Such transfer shall be free and clear of all mortgages, security interests and mechanic's liens. Developer shall not be required to provide the Homes Association with any title insurance policy for any of the Common Areas. Any transfer of title by the Developer shall not require the consent of the Homes Association and shall not constitute an assignment by the Developer of any of its rights, as the developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration.

8.4 Notwithstanding the actual date of transfer, 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 thereover maintained by any governmental authority, utility or similar person or entity. 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.

8.5 Each of the Developer and the Homes Association, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa. In addition, each of the Developer and the Homes Association shall have the right to transfer to the City (but only with the City's consent) title to or easements over all or any part of the Common Areas so that they become public areas maintained by the City.

8.6 Each Owner who is in good financial standing with the Association, and such Owner's tenants and guests, shall have the right to use and enjoy the Common Areas for their intended purposes, subject to any rules and regulations adopted by the Homes Association.

ARTICLE IX
NOTICES

9.1 The Homes Association shall designate from time to time the place where payment of Assessments shall be made and other business in connection with the Homes Association may be transacted.

9.2 All notices required or permitted under this Declaration shall be deemed given if (i) deposited in the United States Mail, postage prepaid, and addressed to the Owner at the address of the Lot or (ii) sent by electronic mail to the Owner at the electronic mail address last provided by the Owner to the Homes Association. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE X
EXTENSION OF SUBDIVISION

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any tract, street, park or right-of-way) by executing, acknowledging and recording in the Recording Office a written instrument subjecting such additional property 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 absolute discretion.

ARTICLE XI
AMENDMENT AND TERMINATION

11.1 This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by both (a) the Owners of at least 60% of the Lots within the Subdivision as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer. After recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors on the Board of the Homes Association and then approved by the members of the Homes Association at a duly held meeting of the members of the Homes Association (called in whole or in part for that purpose) by the affirmative vote of Owners owning at least 60% of the Lots. Notwithstanding the foregoing, no amendment adopted under this Section 11.1 may remove, revoke or modify any right or privilege of Developer under this Declaration at any time without the prior written consent of Developer.

11.2 Anything set forth in Section 11.1 of this Article 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, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) any of the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision, (iii) the amendment is necessary to cause this Declaration to comply with any applicable law, (iv) in the opinion of the Developer, a typographical or factual error or omission needs to be corrected, (v) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision or (vi) so long as Developer owns any Lots, to make any other amendment the Developer may determine to be appropriate. No such amendment by the Developer shall require the consent of any Owner or the Homes Association.

11.3 If the rule against perpetuities or any rule against restraints on alienation or similar restriction 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 individual(s) signing this Declaration on behalf of the Developer and the now-living descendants of the individual(s) signing this Declaration on behalf of the Developer as of the date of such execution.

ARTICLE XII
ASSIGNMENT

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

12.2 The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

ARTICLE XIII
COVENANTS RUNNING WITH THE LAND

13.1 All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon and inure to the benefit of all subsequent grantees of all parts of the Subdivision. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit nor be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

13.2 No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation or default.

13.3 No waiver of any violation or default shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have.

ARTICLE XIV
GOVERNING LAW AND SEVERABILITY

14.1 This Declaration shall be governed by and construed in accordance with the laws of Kansas.

14.2 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.

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

THE DEVELOPER:

DAY3 DEVELOPMENT, LLC

By: _____
Name: Daniel M. Knight
Title: Manager

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me, a notary public, on January 3, 2017 by **Daniel M. Knight**, as Manager of Day3 Development, LLC, a Missouri limited liability company.

_____
Notary Public in and for said County and State

My Commission Expires:
2/23/20
[SEAL]

Print Name: Marcia K Bergin

MARCIA K. BERGIN
Notary Public
State of Kansas
My Commission Expires 2/23/20

NATIVE PLANTING SPECIES:

DESIGN MIX (EQUAL PARTS OF):

1. KAW BIG BLUESTEM (24.68%)
2. OSAGE INDIANGRASS (16.62%)
3. EL RENO SIDEOATS GAMA (19.67%)
4. ALDOUS LITTLE BLUESTEM (12.87%)
5. BLACKWELL SWITCHGRASS (8.96%)
6. INERT MATTER (17.19%)

APPLY 12 LBS/ACRE

N

DRAWN BY:	MAB
CHECKED BY:	MAB
DATE:	9-28-16
PROJECT NO:	14-161
SCALE:	1" = 200'
SHEET	1 OF 1

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#E-296 #LA-29 #LS-54

EXHIBIT A

I:\PROJECTS\2014\14-16\2.0 Survey\3.0 Plat\14-161 FLP.dwg, ANSI full bleed A (8.50 x 11.00 Inches), 1:1