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**RED HAWK RUN**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**OLATHE, KANSAS**

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EXHIBIT A – LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B – RESTRICTIONS ON FENCES

EXHIBIT C – ADDITIONAL LAND

**RED HAWK RUN**

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OLATHE, KANSAS**

THIS DECLARATION is made this 15<sup>th</sup> day of July, 2013, by FFBWC Investors, L.L.C., a Missouri limited liability company (hereinafter referred to as "**Declarant**").

**RECITALS:**

A. Declarant is the owner of certain real property located in Olathe, Johnson County, Kansas, which is more particularly described in **Exhibit A** incorporated herein by this reference ("**Property**").

B. The Property shall be conveyed to third parties, subject to certain protective easements, restrictions, covenants, conditions and liens as set forth in this Declaration.

NOW, THEREFORE, Declarant hereby declares that all of the Property described in **Exhibit A** hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions, reservations, liens and charges, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on and shall inure to the benefit of all parties having any right, title or interest in the Property or any part thereof, including their heirs, successors and assigns.

**ARTICLE 1.**  
**DEFINITIONS**

**SECTION 1.1.** "**Additional Land**" shall have the meaning ascribed to such term in Section 12.1.

**SECTION 1.2.** "**Appearance Control Committee**" is fully described in Article 10. Prior to the formation of the Committee and during any periods of time after formation that the Committee no longer exists, all consents and approvals reserved to the Committee shall be made by the Declarant.

**SECTION 1.3.** "**Articles of Incorporation**" shall mean the Articles of Incorporation for the Association.

**SECTION 1.4.** "**Assessments**" shall mean collectively the Base Annual Assessments, Special Assessments and Capital Contributions that the Association is authorized to levy under this Declaration.

**SECTION 1.5.** “Association” shall mean The Red Hawk Run Homeowners Association, a Kansas not-for-profit corporation, and its successors and assigns.

**SECTION 1.6.** “Base Annual Assessments” shall have the meaning ascribed to such term in Section 5.2.

**SECTION 1.7.** “Bylaws” shall mean the Bylaws of the Association; as such may be amended from time to time.

**SECTION 1.8.** “Capital Contributions” shall have the meaning ascribed to such term in Section 5.4.

**SECTION 1.9.** “City” shall mean the City of Olathe, Kansas.

**SECTION 1.10.** “City Property” shall mean all real property, improvements, and all infrastructure improvements conveyed or dedicated to the City.

**SECTION 1.11.** “Common Area” shall mean all real property and improvements and fixtures thereto and all personal property owned by the Association for the common use and enjoyment of the Owners. Existing Common Area includes green space, landscaping and structure within the entry island and landscaping located within street rights-of-way and landscaping features; possible future trails and other recreational areas and/or structures; drainage and retention facilities; any land deeded to the Association by or at the direction of Declarant; any easements, leases, licenses and other interests in real property and rights of use granted to the Association by or at the direction of Declarant; PROVIDED, HOWEVER, the foregoing does not constitute a representation or warranty that any Common Area so enumerated will exist within the Property.

**SECTION 1.12.** “Declarant” shall mean and refer to FFBWC Investors, L.L.C., a Missouri limited liability corporation and its successors and assigns.

**SECTION 1.13.** “Dedicated Right-of-Way” shall mean and refer to the public rights-of-way depicted on any Plat of Subdivision.

**SECTION 1.14.** “Lot” shall mean a plot of land upon which a Residence is constructed or to be constructed, created by the recording of a Plat of Subdivision.

**SECTION 1.15.** Deleted.

**SECTION 1.16.** “Member” shall mean and refer to every person or entity who holds a membership in the Association, including Declarant and any beneficiary of a trust holding legal title to one or more Lots.

**SECTION 1.17.** “Owner” shall mean and refer to the record owner, whether one or more natural persons or entities, of fee simple title to any Lot which is a part of the Property.

**SECTION 1.18. “Plat of Subdivision”** shall mean a final plat of subdivision recorded against all or any part or the Property, with the Register of Deeds Office and any amended or additional plat of subdivision made subject to the terms of this Declaration by amendment.

**SECTION 1.19. “Property”** shall mean and refer to real property described on **Exhibit A**, and such additions thereto that may be annexed into the Association by the written amendment of this Declaration, as provided under Section 12.1.

**SECTION 1.20. “Residence”** shall mean one single-family home.

**SECTION 1.21. “Register of Deeds Office”** shall mean the Office of the Register of Deeds of Johnson County, Kansas.

**SECTION 1.22. “Special Assessments”** shall have the meaning ascribed to such term in Section 5.3.

## **ARTICLE 2.** **MEMBERSHIP IN THE ASSOCIATION**

**SECTION 2.1. Membership.** Ownership of a Lot shall be the sole qualification for membership, and there shall be only one (1) membership and vote per Lot. Every Owner, including Declarant, shall be a Member of the Association, and each Owner, by acceptance of a deed for his Lot, agrees to be a Member of the Association, whether or not it shall be so expressed in any such deed or other conveyance.

**SECTION 2.2. Transfer of Membership.** Membership held by any Owner of a Lot is an appurtenance to such Lot and cannot be transferred, or pledged in any way, except upon the sale of such Lot and then only to the purchaser of such Lot. Transfer of membership shall automatically pass with title to the Lot. Members are required to provide the Association written notification upon the transfer, alienation or sale of their Lot to a new Owner.

## **ARTICLE 3.** **VOTING RIGHTS IN THE ASSOCIATION**

**SECTION 3.1. Membership Classes.** The Association shall have two (2) classes of voting membership, as follows:

(a) **Class A:** Class A Members shall be all Owners of Lots with the exception of Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required by Section 2.1. as Members determine among themselves, except that there shall be only one (1) vote per Lot.

(b) **Class B:** Class B Member shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot in which it holds the interest required by Section 2.1 for membership. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earliest:

- (i) Ten (10) years from the date of this Declaration;
- (ii) One hundred twenty (120) days after ninety-five percent (95%) of the Lots have been conveyed by Declarant to Owners. For purposes of this Section 3.1(b)(ii), the foregoing 95% threshold shall include Lots which are part of the original Property or Additional Land that has been annexed to the Property within such one hundred twenty (120) day period
- (iii) The date on which Declarant voluntarily withdraws as the Class B Member by executing and recording with the Register of Deeds Office, a written declaration of intent to withdraw.

So long as Declarant is a Class B Member, it shall have the absolute right to appoint and remove any member of the Board of Directors and/or officers and agents of the Association.

**ARTICLE 4.**  
**DUTIES AND POWERS OF THE ASSOCIATION**

**SECTION 4.1. General.** The Association shall have the power and duty to

- (a) pay any property taxes and other charges assessed against Common Area;
- (b) grant easements where necessary for public utilities over Common Area to serve Common Area or Lots;
- (c) adopt reasonable rules and regulations for (i) controlling and limiting the use of Common Area, and (ii) supplementing the use restrictions contained in Article 8 or any other restrictions or provisions contained in this Declaration;
- (d) maintain insurance policy(ies) including, but not limited, to those described in Article 16, as the Board of Directors deems necessary or desirable and in the best interests of the Association and its Members, officers and directors;
- (e) Contract with independent contractors, collection agents and others to perform any part of the duties and powers of the Association, if deemed necessary by the Board of Directors;
- (f) enforce any easements or restrictions which may be set forth herein;
- (g) establish reserves as may be required hereunder or as the Board of Directors shall from time to time deem necessary to fulfill and further the purposes of the Association;
- (h) exercise any other right or powers given to the Association under this Declaration or under the Kansas Not-For-Profit Corporation Act (the "**Act**").

**SECTION 4.2. Maintenance of Common Area.** The Association shall maintain, repair, and replace items within the Common Area, as deemed by the Board of Directors to be beneficial and convenient, which may include, but need not be limited to, the following:

- (a) Common Area and its potential elements;
- (b) storm water drainage swales located on Common Area within the Property, together with any improvements thereto;
- (c) potential future pathways designed to accommodate bicycle and/or pedestrian traffic and installed by the Declarant or the Association, whether located on Common Area or within Dedicated Rights-of-Way within the Property, but expressly excluding any such pathways located on City Property;
- (d) potential future fences installed by the Declarant or the Association on Common Area.
- (e) entryway signs and/or monuments identifying any portion of the Red Hawk Run development, whether located on Common Area or within Dedicated Rights-of-Way within the Property;
- (f) landscaping located within Dedicated Rights-of-Way within the Property.

**SECTION 4.3. Property and Lot Maintenance.** All vacant Lots and undeveloped portions of the Property shall be kept mowed to municipal standards and free of trash and construction debris by the Owner thereof. From and after the completion of construction of a residence on a lot, the Owner and occupant of each Lot shall cultivate an attractive ground cover or grass on all areas visible from the street, shall maintain all areas in a sanitary and attractive manner. All bushes, trees and shrubs must be maintained and kept reasonably trimmed. Owners shall comply with City of Olathe municipal code regarding maintenance of lawns and landscaping upon his or her Lot. Upon failure of the Owner of any Lot to maintain such Lot (whether or not developed), the Association may, at its option, have the grass, weeds and vegetation cut as often as necessary in its judgment to comply with applicable municipal code, and the owner of such lot shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such work. These provisions shall be construed to create a lien in favor of the performing party against such property for the cost of such work or the reimbursement sought for such work performed on such property.

**SECTION 4.4. Maintenance of Improvements.** Each Owner shall maintain the exterior of all buildings, fences, walls and other improvements on his lot in good condition and repair, and shall not permit any portions of the improvements to deteriorate. Upon failure of the Owner of any Lot to maintain the exterior of all buildings, fences, walls and other improvements, the Association may, at its option, perform such maintenance as often as necessary in its judgment, and the owner of such Lot shall be obligated, when presented with an itemized statement, to reimburse the Association for the cost of such maintenance work. These provisions shall be

construed to create a lien in favor of the performing party against such lot for the cost of such work or the reimbursement sought for such work performed on such Lot.

**SECTION 4.5. Watering.** The Association shall have the right, but shall not be required, to water any grass, landscaping and plant materials located on Common Area or within any Dedicated Rights-of-Way. All watering on any Lot shall be provided by the Owner thereof. Owners must water, to the extent practical to keep alive all plant materials on their Lots at all times unless otherwise directed by a municipal watering ban.

**SECTION 4.6. No Maintenance of City Property.** Except as expressly set forth herein, City Property shall be owned and maintained by the City. The Association shall have no responsibilities relative to the City Property once the City Property is conveyed to the City by dedication and/or deed, subject to the provisions of this Declaration unless the Association deems it to be in the Associations best interest to maintain such property.

## **ARTICLE 5. COVENANT FOR ASSESSMENTS**

**SECTION 5.1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot, by acceptance of a deed therefore, personally and individually agrees to pay to the Association the Assessments authorized under this Declaration. In addition, Declarant hereby agrees for each Lot owned by Declarant within the Property to pay to the Association the Assessments authorized under this Declaration, subject to the provisions set forth in Sections 5.8 and 5.9. All such Assessments shall be fixed, established and collected as provided in this Declaration. The Assessments, together with interest thereon, attorneys' fees and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment remains unpaid and shall be the personal obligation of the Owner of such Lot at the time when the assessment falls due. This personal obligation shall pass to each Owner's successors in title accepting a deed to or assignment of beneficial interest in any trust holding title to an Owner's Lot.

**SECTION 5.2. Base Annual Assessments.** The Association is authorized to levy Base Annual Assessments equally against all Lots subject to assessment, to be paid by the Owners of all Lots within the Property, to fund common expenses for the general benefit of all Owners. Base Annual Assessments shall be used for the following purposes:

- (a) maintenance, repair, replacement and improvement of Common Area and Lots, and improvements thereon, to the extent such are the responsibility of the Association to maintain under the terms of this Declaration;
- (b) maintenance, repair and replacement of any landscaping located within Dedicated Rights-of-Way that are the responsibility of the Association to maintain under the terms of this Declaration;
- (c) payment of premiums on insurance maintained by the Association pursuant to this Declaration; and

(d) to provide funds for the Association to carry on its duties or exercise its rights set forth herein or in its Articles of Incorporation or Bylaws or under the Act.

**SECTION 5.3. Special Assessments.** The Association is authorized to levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted, for the following purposes:

(a) defraying in full or in part the cost of any construction, reconstruction, repair or replacement of any improvement on Common Area or any improvements which are the responsibility of the Association, including the necessary fixtures, landscaping located on or related to Common Area, and all landscaping or other improvements thereon; and

(b) defraying in full or in part the cost of, and providing of funds to the Association, for carrying on any of its duties set forth in this Declaration or in its Articles of Incorporation or Bylaws or under the Act.

Any Special Assessments shall have the assent of a majority of the votes of the Members that are subject to such Special Assessment voting in person or by proxy in accordance with the Bylaws, setting forth the purpose of the meeting. Unless the Special Assessment specifies that it shall be applicable to a specified number of years, it shall be applicable only to the year enacted.

No Special Assessment shall be levied while the Declarant has majority voting power for the purpose of constructing a swimming pool or swimming pool complex without a majority of the other Class A Members entitled to vote voting in favor of such construction.

**SECTION 5.4. Intentionally Omitted.**

**SECTION 5.5. Basis for and Maximum Amount of Base Annual Assessments.** Until December 31<sup>st</sup> of the year in which these Declaration of Covenants, Conditions and Restrictions are adopted, the maximum Base Annual Assessment shall be \$170.

(a) From and after January 1<sup>st</sup> of the year after formation of Association, the maximum Base Annual Assessment may be adjusted effective January 1<sup>st</sup> of each year by the Board of Directors (at any meeting of the Board of Directors duly convened at least thirty (30) days prior to said January effective date) without a vote of the membership, so long as Declarant is a Class B Member, provided that any such increase shall not be greater than a ten percent (10%) increase over the previous year's Assessment.

(b) Beginning as of January 1<sup>st</sup> of the first year in which Declarant is no longer a Class B Member, the maximum Base Annual Assessment may be adjusted effective January 1<sup>st</sup> of each year by the Board of Directors (at any meeting of the Board of Directors duly convened at least thirty (30) days prior to said January effective date) without a vote of the membership, provided that any such increase shall not be greater than a ten percent (10%) increase over the previous year's Assessment.

(c) Notwithstanding the 10% increase limitation set forth in Subsection 5.5(b) above, the Base Annual Assessment may be further increased for any year by the Board of Directors at any time, over the maximum Base Annual Assessment permitted for the year immediately preceding, without the vote of the membership, if the additional increase is necessary to pay the costs of (i) any increases in real estate taxes for Common Area over the prior year; or (ii) any increases in the maintenance of Common Area or any improvements thereon over the prior year; or (iii) any increases in premiums for insurance procured by the Association over the prior year.

(d) Notwithstanding the adjustment limitation set forth in Subsection 5.5(b) above, the maximum Base Annual Assessment may only be increased in an amount greater 10% for the coming assessment year by the Board of Directors at any meeting of the Board of Directors (duly convened at least thirty (30) days prior to said January 1st effective date), in which the majority of the votes of the Members voting in person or by proxy vote "yes", at a meeting duly called for such purpose, at which a quorum is present. Written notice of such meeting has to be sent to all Assessment paying Members not less than five (5) days nor more than forty (40) days in advance of the meeting, setting forth the purpose of the meeting.

(e) After consideration of future needs and expected expenditures of the Association, the Board of Directors may fix either type of Assessment in lesser amounts than the maximum Assessments or may, in its discretion, suspend or reduce Assessment of either type for any year, but such suspension or reduction shall not be used as a basis to calculate Assessments for any year(s) following. Rather, the Assessment in last year prior to such suspension or reduction shall be used as a basis in years following.

**SECTION 5.6. Reasonable Reserves.** The Association shall establish and maintain from Base Annual Assessments collected, reasonable reserves for the costs of the maintenance, repair and replacement of those items which are the responsibility of the Association. The Association may establish and maintain such other reasonable reserves as the Board of Directors deems necessary.

**SECTION 5.7. Uniform Rate of Assessment.** Base Annual Assessments must be fixed at a uniform rate for Lots within the Property. Base Annual Assessments may be collected on an annual basis or such other periodic basis as set by the Board of Directors.

**SECTION 5.8. Assessment for Lots Owned by Declarant.** Notwithstanding the foregoing provisions, Base Annual Assessments and Special Assessments for any Lots while (i) owned by Declarant and improved with a completed Residence, but unoccupied by any tenant of Declarant, or (ii) owned by any party but occupied by Declarant and used as a model or a sale office, shall be limited to 25% of the amounts fixed with respect to such type of Lots owned by Owners other than Declarant. Additionally, prior to the completion of a Residence on any Lot, (which shall mean the issuance of a certificate of occupancy therefore by the City), all Lots owned by Declarant shall be exempt from payment of any and all Assessments.

**SECTION 5.9. Declarant Liable for Association Deficits.** Provided all other Lot Owners shall have paid all outstanding Base annual and Special Assessment due and payable, prior to the date the Class B Membership shall cease, Declarant shall pay for any deficits or financial shortfalls incurred or realized by the Association in connection with the repair or maintenance of the Common Elements and payment of real estate taxes on such Common Elements.

**SECTION 5.10. Date of Commencement of Annual Assessments; Due Dates.** Base Annual Assessments shall commence for any Lot within the Property, or any land annexed to the Property, on the day of the conveyance of the Lot and shall be prorated for the month of said conveyance. The Board of Directors shall fix the amount of such Assessments at least thirty (30) days in advance of each annual Assessment period, and in lieu thereof, the amount of each type of such Assessment for the prior year shall be the fixed amount. Written notice of any changed amount of such Assessments shall be sent to every Owner subject thereto, but failure to do so shall not invalidate the changed Assessments. Base Annual Assessments shall be payable annually.

**SECTION 5.11. Certificate of Payment.** The Association shall, upon demand, furnish to any Owner liable for said Assessments, a certificate in writing signed by an officer of the Association, setting forth whether the Assessments on a specified Lot have been paid and the amount of the delinquency, if any. Such certificates shall be conclusive evidence of paid Assessment.

**SECTION 5.12. Delinquency in Payment of Assessments.** Any Assessment provided for in this Declaration which is not paid when due, shall be delinquent. With respect to each Assessment not paid within fifteen (15) days after its due date, the Association may, at its election, require the Owner to pay a "late charge" in a sum to be determined by the Association and applied uniformly. If any such Assessment is not paid within thirty (30) days after the delinquency date, the Assessment shall bear interest from the date of delinquency at the lesser of (a) such rate as may be approved by the Board, or (b) the highest rate permitted by Kansas law, and the Association may, at its option, bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien (provided for in Section 5.1) against the Lot, and there shall be added to the amount of such Assessment the late charge, the "**Delinquency Costs**" (which may include, without limitation, any costs incurred by Declarant or the Association in connection with the delinquency, whether or not legal proceedings are initiated), the costs of preparing and filing a Complaint in such action and reasonable attorneys' fees, and in the event a judgment is obtained, such judgment shall include all Assessments accrued from date of suit to judgment, increased by such late charges, Delinquency Costs, plus interest. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or lien foreclosures against such Owner for the collection of such delinquent assessments

**SECTION 5.13. Suspension of Voting Rights Due to Unpaid Assessments.** The Association is authorized to suspend the voting rights of an Owner for any period during which any Assessment against such Owner's Lot remains unpaid and delinquent, and for any period during which an Owner is in breach of any non-financial provision of this Declaration or the published rules and regulations of the Association, provided that any suspension of such voting

rights, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws or rules and regulations of the Association. The foregoing shall not apply to unfunded deficiency contributions of the Declarant under Section 5.9.

**SECTION 5.14. Waiver of Use.** No Member may exempt himself from personal liability for Assessments duly levied by the Association nor release the Lot owned by him from the liens and charges hereof, by waiver of the use and enjoyment of Common Area or by abandonment of his Lot.

**SECTION 5.15. Subordination of the Lien to Mortgages.** The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage or trust deed. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure of a mortgage or trust deed or any proceeding or deed in lieu thereof shall extinguish the lien of such Assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

## **ARTICLE 6. PROPERTY RIGHTS**

**SECTION 6.1. Members' Easements over Common Area.** Every Member shall have a right and easement for ingress and egress over and across, and for use of and enjoyment in and to, Common Area and the improvements thereon, and such easements shall be appurtenant to and shall pass with the title to every Lot. Said right of easement for ingress and egress over and across, and of enjoyment in and to, Common Area and improvements located thereon shall be subject to the following provisions:

(a) The right of Declarant and the Association to declare or grant easements and licenses and to dedicate or transfer all or part of Common Area to a public agency, authority, or public or private utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument has been recorded, signed by the Association and authorized by the assent of at least sixty-seven percent (67%) or more of the votes of each class of Members present in person or by proxy and entitled to vote at a meeting duly called for such purpose at which a quorum is present, written notice of which is mailed to all Members not less than five (5) days nor more than forty (40) days in advance of the meeting, setting forth the purpose of the meeting.

(b) The right of the Association to establish uniform rules and regulations (including fines) pertaining to the use of Common Area; PROVIDED, HOWEVER, that the Association shall not limit or prohibit the public use of pathways located within the Property.

(c) The right of the Association to suspend an Owner's right to use any improvements located within Common Area (i) for any period during which any charge

against such Owner's Lot remains delinquent; and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of this Declaration or the rules and regulations of the Association after written notice thereof.

(d) The right of Declarant and its designees to (1) non-exclusive use of Common Area in connection with the sale of Residences within the Property; and (2) the use of any improved Residence on any of the Lots as a sales office until the last Lot within the Property is improved with a Residence and conveyed to a third party purchaser.

(e) Such other rights as are reserved or created by this Declaration.

**SECTION 6.2. Delegation of Use.** Any Member may delegate in accordance with the Bylaws of the Association, such Member's right of enjoyment to Common Area and the improvements located thereon to the members of his family, and the occupants residing on such Member's Lot.

**SECTION 6.3. Association's Access to Lots.** The Association shall have the right and license to enter upon any Lot to the extent necessary to exercise any right or responsibility of the Association as set forth in this Declaration, as to the Lot or the dwelling unit or other improvements situated thereon, or to the extent necessary to enforce any covenants or restrictions set forth herein and shall not be guilty of trespass.

**SECTION 6.4. Access to Adjoining Lots.** Every Owner of a Lot and also the Association, shall have the right and license to enter upon the adjoining Lot to the extent necessary for the purpose of maintaining, repairing, replacing or adding to the improvements situated on or near the boundary of such Owner's Lot and shall not be guilty of any trespass. In the event the Owner of a Lot or the Association, enter upon any such Lot for these purposes created by this Section, then such Owner, or the Association, as the case may be, shall make all necessary repairs or replacements to correct any damage inflicted upon such Lot by exercise of the right and license.

## **ARTICLE 7.** **EASEMENTS**

**SECTION 7.1. Title to Common Area.** Declarant hereby expressly reserves the right to convey to the Association all of its right, title and interest in and to any and all of the Common Areas, and Declarant covenants for itself, its successors and assigns, that it will convey or cause to be conveyed fee simple title to Common Area to the Association, subject to:

- (a) Covenants, conditions and restrictions and all other matters then of record;
- (b) The terms of this Declaration and the rights of Owners as herein set forth;
- (c) Certain conditions and restrictions concerning the use, management and operation of such Common Areas as are determined by the Declarant;

(d) Zoning ordinances, development agreements and annexation agreements of record;

(e) Current real estate taxes and installments of special assessments not yet due and payable (for which Declarant shall pay or make arrangements to pay its pro rata share);

(f) Utility easements granted or to be granted for sewer, water, gas, electricity, telephone, cable television and any other necessary utilities;

(g) Reservation of easement for ingress and egress; and,

(h) Easements granted or to be granted for the construction, maintenance, repair and use of improvements to be located on Common Area, which may include, without limitation, any and all easements granted to any Common Area improvements.

The Association shall accept such conveyances, assume and perform its and Declarant's obligations under such agreements, and shall maintain all public facilities and all improvements on Common Areas.

**SECTION 7.2. Utility Easements.** Declarant hereby reserves unto itself, its successors and assigns, the right (i) to create across Common Area or the Lots, at any time before conveyance, non-exclusive perpetual utility easements and (ii) to utilize any easement created by any Plat of Subdivision or other instruments, for the installation, removal or replacement, and maintenance of sewer (storm and sanitary), water, gas, electricity, cable television, telephone and any other utilities as may be necessary in Declarant's sole judgment to develop, service and maintain the Property and/or to serve the homes constructed on the Property, or other adjacent properties. The aforesaid easements shall include reasonable rights of ingress and egress. It shall be the obligation of any party exercising the easement to restore any areas disturbed by this work to generally the same condition that existed prior to work and in the manner and to the extent set forth in the provisions contained herein and in the Plats of Subdivision for the Property relating to the exercise of easements.

**SECTION 7.3. Reservation of Easements for Declarant's Benefit.** Anything contained in this Declaration to the contrary notwithstanding, Declarant hereby reserves for itself, its agents, employees, contractors, workmen, and any successor builders an easement upon Common Area for the purposes of constructing, maintaining, inspecting, exhibiting and selling any Lots or dwelling units then owned by Declarant or any such successor builders.

**SECTION 7.4. Easement for Access to City Property.** Declarant hereby declares and reserves for the benefit of the City, its employees, agents and contractors, an easement and right of ingress and egress, upon any portion of Common Area within the Property to the extent reasonably necessary for access to any portion of the City Property for purposes of inspecting, maintaining, repairing and replacing all or any portion of the City Property.

**ARTICLE 8.**  
**USE RESTRICTIONS**

**SECTION 8.1. Residential Use.** The Property is hereby restricted to residential dwellings, and accessory uses in connection therewith, subject to the provisions of Sections 8.2 and 9.4 and except for model homes and sales offices which may be operated by Declarant or its designees during the construction or sales period. All buildings or structures erected on the Property shall be of new construction and no subsequent buildings or structures other than single family detached homes shall be built on any Lot. Each Residence may be occupied by one (1) family of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together or in the same residence; **PROVIDED, HOWEVER,** that nothing contained herein shall prevent occasional temporary occupancy by guests of the family or occupancy by full-time domestic servants or medical assistants employed by the family. No building or structure intended for or adapted to commercial, business or professional purposes, nor any apartment house, duplex, double house, lodging house, rooming house, dormitory, church, school, hospital, sanatorium, guest house, servant's quarters or multiple family dwelling shall be erected, placed, permitted or maintained on any Lot.

**SECTION 8.2. Restrictions on Commercial Activities.** No commercial activities of any kind shall be conducted in any residence; **PROVIDED, HOWEVER,** that an Owner may operate a home-based business on his Lot only if (i) the operation of the commercial activity is not detectable by sight, sound, or smell from outside the Owner's Residence, (ii) the commercial activity is not prohibited by the ordinances or regulations of the City and is conducted in compliance with the City's zoning ordinances, (iii) no motor vehicle with business markings is stored or parked on the Lot outside of a garage, and (iv) the commercial activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Property which is noticeably greater than typical of residences within the Property. The foregoing restrictions shall not apply to the commercial activities of Declarant or its designees, for the use or sales offices or model units.

**SECTION 8.3. Prohibition of Commercial Vehicles, Buses, Trucks, Limousines, Boats, Trailers and Recreational Vehicles on Lots.** No commercial vehicles (with the exception of one (1) passenger-size pickup or van used by a Lot Owner in connection with his or her job), buses, semi trucks, limousines, boats, trailers, or recreational vehicles shall be parked or stored on a Lot, except within a garage. This restriction shall not apply to temporary parking for deliveries and other commercial services.

**SECTION 8.4. Garages; Storage of Cars.** The Owner of any Lot shall keep the garage door of his Residence shut when not in use. No Owner shall park or store non-operable vehicles on neighborhood streets or on driveways within his or her Lot for more than forty-eight (48) continuous hours.

**SECTION 8.5. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot except for dogs, cats and other common household pets, but not for breeding purposes. No more than four (4) domesticated household pets will be permitted on each

Lot. The owner of any pet shall immediately remove any bodily waste deposited by its pet on any Lot, Common Area, parkways, cul-de-sac islands or streets.

**SECTION 8.6. Limitations on Signs.** No sign shall be displayed in public view any Lot except for the following: (i) one (1) sign of not more than 10 (ten) square feet, which advertises the Lot and improvements thereon for sale; (ii) signs used by Declarant or its designee to advertise the land or lots or improvements during the development, construction and sales period; and (iii) required by legal notice signs; and (iv) one (1) professional sign of not more than five (5) square foot which may promote private sales (such as “garage” sales), and political candidates. Any such signs may not: (i) describe the condition of the Unit or Lot; (ii) malign or refer to the reputation, character or building practices of Declarant or any other Lot Owner; and (iii) discourage or attempt to impact anyone's decision to acquire a Lot or Unit in the Property. Declarant and Association or their respective agents shall have the right to remove all signs, billboards or other advertising structures that do not comply with this Section.

**SECTION 8.7. Prohibition of Nuisances.** No Owner shall permit any noxious or offensive activity, or permit anything to be done or kept about or within his or her Lot which will obstruct or interfere with the rights of other Owners or annoy them with unreasonable noises, nor shall he or she commit or permit any other nuisance or commit any illegal act to be committed thereon.

**SECTION 8.8. No Clothes Drying; Screening of Equipment.** The drying of clothes and permanent equipment for the purpose of hanging laundry in public view is prohibited on any Lot. The Owners and occupants of any Lots at the intersections of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to public view shall construct an enclosure, subject to the fence restrictions set forth in **Exhibit B** hereto, to screen equipment which is incident to normal residences, such as yard equipment, lawn furniture, pool filtration, composting equipment and stored maintenance materials.

**SECTION 8.9. Limitations on Fences.** The Property shall be subject to restrictions with respect to fences as set forth on **Exhibit B** attached hereto.

**SECTION 8.10. Prohibition of Window Air Conditioners or Window Fans.** No window air conditioners or window fans shall be placed in any home constructed on the Property.

**SECTION 8.11. Trash Removal.** All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate. All rubbish, trash and garbage shall be stored within the garage until the scheduled day of pick-up. These restrictions shall not apply to the new home construction activities of Declarant, its designees and those working for or on behalf of Declarant during the construction period.

**SECTION 8.12. Restrictions on Changes or Improvements.** No awnings shall be constructed or added to the front of any home. Any other additions, changes or improvements to any home structure, the placement of any patios or decks on the Lot will be allowed only with the approval of the Appearance Control Committee, as provided under Article 10. The Committee shall have discretion to approve placement of decks that encroach upon rear yard set-backs as

designated on any Plat of Subdivision. All improvements which require a permit from the City will only be approved subject to the issuance of such permit.

**SECTION 8.13. Restrictions on Radio and TV Receiver Installations.** The Board of Directors shall have discretion, to be exercised through the adoption of an appropriate rules, to specify, limit or prohibit the type, size, color, number and/or placement of radio, television and other telecommunications receivers on any Lot to the extent the Board of Directors deems beneficial and convenient; PROVIDED, HOWEVER, that any such rule or rules adopted by the Board of Directors shall (i) be enforced against Owners in a non-discriminatory manner and (ii) comply with the terms and conditions of applicable federal, state or local laws, ordinances, rules or regulations, as same may be amended from time to time. No such installations by any Owner shall be permitted upon any portion of Common Area without the prior written consent of the Association, which may be withheld in its discretion (to be exercised in accordance with applicable law as aforesaid).

**SECTION 8.14. Clearance of Utilities.** The Owner of a Lot, and not the Association, shall be responsible for the clearance and relocation of any utilities that must be made in connection with the installation of any improvements by the Owner on his Lot.

**SECTION 8.15. Maintenance of Easement Areas.** Easements for installation and maintenance of the utilities and drainage facilities over any Lots and in Common Area, are reserved as shown on the recorded Plat of Subdivision or as created in accordance with this Declaration or any amendments hereof. No structure, planting or other materials shall be placed or permitted to remain within these easements which may damage or interfere with the installation and maintenance of utilities or which may change the direction in the flow, obstruct or retard the flow of water within drainage channels in the easements. All such easement areas located on a Lot shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, a private or public utility company or the Association is responsible.

**SECTION 8.16. Leases of Lots.** Any Owner may lease his Lot and any leases must be made expressly subject to the terms of this Declaration. In the event any Owner leases his Lot, he shall at all times keep the Association advised in writing of the address of his own current residence and any changes thereto, and of the name(s) of his tenant(s). Notwithstanding the foregoing, Declarant and its successors and assigns shall have the right to rent any or all Residences located on Lots owned by Declarant for a period of not more than one (1) year.

**SECTION 8.17. Limitation on Number of Lots Owned by One Owner.** No Owner may own more than two (2) Lots with a completed Residence located thereon within the Property at any one time, except the Declarant or a mortgagee who has obtained ownership through some type of foreclosure action.

**SECTION 8.18. Right of Abatement, Correction or Removal.** In addition to other rights and remedies that may be available to the Association, as provided in this Declaration, or as may otherwise be available to the Association, in the event any Owner shall violate or suffer on his Lot the violation of any of the Use Restrictions contained in this Article 8 or any supplement the Use

Restrictions, as provided in Section 8.1, the authorized agents of the Association, upon an affirmative vote taken by the Board of Directors, may enter upon the Lot with no further notice than that provided by the recording of this Declaration, and may (but shall not be required to) abate, correct or remove such violation and the cost of such abatement, correction or removal, together with any other fines or penalties that may be promulgated by the Association thereof shall be paid by the Owner, and if unpaid, shall constitute a lien against the Lot, enforceable in the manner provided in Sections 5.12 and 5.13 hereof. In such event, the Association, its Board of Directors, nor the authorized agents of the Association shall be guilty of trespass or held liable for damages.

## **ARTICLE 9.**

### **CONSTRUCTION OF IMPROVEMENTS**

**SECTION 9.1. General Standards.** All construction in the Property shall be in accordance with the standards developed pursuant to this Article 9, unless otherwise approved by the Committee as provided herein.

**SECTION 9.2. Garage Required.** Each residence shall have a private, attached garage suitable for parking not less than two (2), nor more than four (4), standard size automobiles and, shall conform in appearance, design and materials to the main residence. No garage shall be enclosed or otherwise altered to prevent the parking of at least two (2) conventional automobiles completely within such garage. Enclosure of garages by Declarant for temporary marketing, sales, construction or office purposes is permitted hereby, provided such enclosures and offices are architecturally compatible with the residence and this Declaration and are used in accordance with the provisions of Section 3.4(m) hereof. If any garage is so enclosed by Declarant or a Builder, such garage shall be converted to use solely for the parking of automobiles as described in Section 9.4 hereof prior to the sale of such residence to the occupying Owner.

**SECTION 9.3. Driveways.** All driveways shall be surfaced with concrete.

**SECTION 9.4. Construction Specifically Regulated.**

(a) No temporary dwelling, shop, trailer or mobile home of any kind nor any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, or gazebos as approved by the Committee for storage of lawn or pool maintenance equipment) shall be permitted on any lot except that the Declarant or its designee may have temporary dwellings, trailers or improvements (such as a sales office and/or construction trailer) on a given Lot. No building material of any kind or character shall be placed or stored upon the lot until the owner thereof is ready to commence construction of improvements thereon, and then such material shall be placed only within the property lines of the lot upon which the improvements are to be erected. No house shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction.

(b) No structure of a temporary character, such as a trailer, tent, shack, barn or other out-building, shall be used on any land at any time as a dwelling house; PROVIDED, HOWEVER, that Declarant or any builder may maintain and occupy model houses, sales offices and construction trailers.

(c) No air-conditioning apparatus shall be installed on the ground in front of a residence or on the roof of any residence.

(d) No fence (except as may otherwise be permitted herein or on any exhibits hereto), wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points ten (10) feet from the intersection of the street right-of-way lines, or, in the case of a rounded property corner, from the intersection of the street right-of-way lines as extended. The same sight-line limitations shall apply on any lot within ten (10) feet from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight line.

(e) Except for children's playhouses or play equipment (as approved by the Committee), no building previously constructed elsewhere shall be moved onto any lot, it being intended that only new construction be placed and erected thereon.

(f) After Declarant has developed the lots, the general grading, slope and drainage plan of a lot may not be altered, nor may any dams, berms, channels or swales be constructed, without the prior approval of the Committee, the City (if applicable) and other appropriate agencies having authority to grant such approval.

(g) All construction shall comply with this Declaration and all other applicable deed restrictions, encumbrances of record, zoning ordinances and requirements, building codes, FHA and VA requirements and regulations and all other applicable ordinances and regulations.

(h) All roof surfaces shall have at least: (i) a six (6) foot to twelve (12) foot pitch or slope on the main structure; and (ii) a four (4) foot to twelve (12) foot pitch or slope on the garage and porches unless otherwise approved by the Declarant or Committee.

**SECTION 9.5. Minimum Floor Area.** The total air-conditioned habitable living area of the residential structure on each lot, as measured to the outside of exterior walls, but exclusive of porches, garages and patios, shall be not less than 1,500 square feet on the main floor for a ranch style residence; 2,100 square feet for a two story residence with at least 900 square feet on the main floor; and 1,950 square feet for a one and one-half story (and reverse one and one-half story) residence with at least 900 square feet on the main floor; 1,800 square feet for a split level residence with at least 1,400 square feet on the main floor. Declarant reserves the authority to

allow a deviation of not more than 10% of the foregoing square footage requirements at its discretion.

**SECTION 9.6. Approved Materials.**

(a) At all times, for both new construction and remodeling or replacement of Residences, the exterior of each residential structure must be faced on all sides with either stone, brick, stucco or a siding material approved by the Committee.

(b) The exterior surfaces of the chimney chases shall be fully enclosed by materials approved by the Committee.

(c) Roofing materials may be slate, tile or composition or asphalt roofing material, which composition or asphalt roofing material is restricted to material weighing a minimum of one hundred ninety (190) pounds per one hundred (100) square feet, unless otherwise approved by the Committee; PROVIDED, HOWEVER, all such roofing materials shall conform to applicable City ordinances.

**SECTION 9.7. Side, Front and Rear Setback Restrictions.** No Residence shall be located on any lot nearer to the front or rear lot line or nearer to the side lot line than the minimum setback lines shown on the Plat of Subdivision for Red Hawk Run. In any event, no building shall be located on any lot nearer than thirty (30) feet from the front lot line, nor on corner lots nearer than twenty (20) feet to the side property line adjoining the street. For all purposes of this Section 9.7, eaves, steps and open porches shall not be considered as a part of a Residence; PROVIDED, HOWEVER, that this shall not be construed to permit any portion of a Residence on a Lot to encroach upon another Lot or to vary from any applicable City requirements.

**SECTION 9.8. Fences and Walls.** The location and type of any fence or wall must be approved by the Committee and must be constructed of masonry, brick, wood or other material approved by the Committee and must comply with all applicable governmental requirements and ordinances and all provisions of this Declaration. Except as approved by the Committee or as otherwise set forth herein, no fence or wall shall be permitted to extend nearer to, (i) the front street than five (5) feet from the rear of the house, or (ii) the side street than the side of the house facing said side street. No structural supports of any fence shall be visible from any public right-of-way except any sections of fence adjacent to railroad Right of Way. Additional fence requirements are contained in Exhibit B hereto.

**SECTION 9.9. Sidewalks.** All sidewalks shall conform to all applicable City specifications and regulations.

**SECTION 9.10. Mailboxes.** Mailboxes shall be constructed of a material and design approved by each of the City, the Committee and the United States Postal Service.

**SECTION 9.11. Signs Advertising the Property or Lots.** All signs advertising the entire land or any substantial part thereof shall be approved by the Committee. All signs shall be

maintained in good condition and repair, with a neat and orderly appearance, and shall comply with the applicable ordinances of the City. All signs advertising the Property shall be removed after all buildings to be initially constructed on the advertised lot(s) have been sold. Declarant, the Association or the Committee may remove from the Property or any surrounding area any signs which do not comply with this Section 9.12.

**SECTION 9.12. Destruction.** Any improvements on any Lot which are fully or partially destroyed or damaged by fire, storm or any other peril shall be fully rebuilt and repaired by the Owner or the debris therefrom fully removed, within a reasonable period of time not to exceed one hundred eighty (180) days after the occurrence of destruction or damage, unless a written extension is obtained by the owner from the Association and approved in advance by the Association and Committee. No structure shall be permitted to remain with its exterior in a damaged condition longer than six (6) months. In the event that an Owner fails to comply with 180-day time limitation, the Association shall assess liquidated damages in the amount of \$100 per day against the Owner, which shall become a lien on the Owner's Lot and be subject to collection in accordance with the provisions of this Declaration.

## **ARTICLE 10.**

### **APPEARANCE CONTROL COMMITTEE**

**SECTION 10.1. Creation of Appearance Control Committee.** There is hereby created an Appearance Control Committee (the "**Committee**"), which shall consist of three (3) members designated and replaced from time to time by Declarant or by the Board of Directors as provided in this Section 10.1. Declarant is hereby authorized to designate and replace members of the Committee until such time as the last Lot of the Property is developed with a home and is sold to a third party purchaser. Thereafter, such powers and duties shall be vested in the Board of Directors of the Association or in a committee duly appointed by such Board of Directors. No member of the Committee, nor its designated representative, shall be entitled to any compensation for such services performed pursuant to this covenant.

**SECTION 10.2. Review and Approval of Plans.** No structure, improvement or addition (including, but not limited to, decks, patios and in-ground pools), shall be constructed, placed or altered on any Lot until the building plans, specifications and plot plan showing the location and proposed construction, placement or alteration has been approved in writing by the Committee as to conformity of external design with any existing structure on the Property and as to location with respect to topography and finished ground elevation. The Committee shall notify an applicant of such approval or disapproval of its action within thirty (30) days after said building plans and specifications or plot plan have been submitted to the Committee; or, in the event the Committee does not disapprove of the building plans, specifications and plot plan as submitted, within said 30 day period, such approval will not be required, and this covenant shall be deemed to have been fully complied with.

**SECTION 10.3. Enforcement.** In the event any such structure, improvement, addition or construction is placed or altered on any Lot in violation of the provisions of this Article 10, the authorized agents of the Association, upon an affirmative vote taken by the Board of Directors, may enter onto such Lot with no further notice than that provided by the recording of

this Declaration and may (but shall not be required to) remove the same and the costs of removal (including any and all fines or penalties assessed by the Association) shall be paid by the Owner, and if unpaid, shall constitute a lien against the Lot as provided in Section 5.1 and shall give rise to the remedies available to the Association provided in Sections 5.12 and 5.13. In such event, neither the Association, its Board of Directors or its authorized agents shall be guilty of trespass or held liable for damages. In the event suit is filed or in the event the Association takes other actions to enforce this Declaration with respect to such structure, improvement or addition, including removal thereof by the authorized agents of the Association, the Owner shall be responsible for attorneys' fees and costs incurred by the Association, as provided in Section 17.1 hereof.

**ARTICLE 11.**  
**OWNER'S OBLIGATION TO MAINTAIN**

**SECTION 11.1. Covenant to Maintain.** Each Owner, his heirs, successors and assigns, hereby covenants and agrees at all times to maintain his Lot, and the Residence constructed thereon, in a neat and proper condition and to perform all necessary repairs thereto pursuant to this Declaration. The foregoing shall include the duty of each Owner to water the landscaping on such Owner's Lot. The Owner of each Lot shall be solely responsible for all repair and replacement of lawn, plants, shrubs and other landscaping, which were damaged or died due to the failure of the Owner to adequately water his Lot.

**SECTION 11.2. Enforcement of Owner's Maintenance Obligations.** If any Owner fails to perform his or her obligations hereunder, the Association may, but shall not be required to, perform such obligations (including repair and replacement of landscaping and plant materials), and shall not thereby be deemed guilty of trespass. The Association shall be entitled to reimbursement in full from the Owner for its costs of every kind incurred in connection therewith, and any such expenditures incurred by the Association shall become the personal obligation of the Owner and a continuing lien on the Lot, recoverable with interest, costs and reasonable attorneys' fees in the same manner and to the same extent as provided under Section 5.1 and shall give rise to the remedies available to the Association provided in Sections 5.12 and 5.13.

**ARTICLE 12.**  
**ANNEXATION OF ADDITIONAL LAND**

**SECTION 12.1. Red Hawk Run Development Plan.** Declarant intends in the future, but is under no obligation, to plat and develop additional phases of the Red Hawk Run subdivision. Declarant's conceptual plan for Red Hawk Run, as fully platted and developed, consists of additional single family homes. For ten (10) years from the recording of this Declaration, Declarant shall have the right to annex such areas to the Property and to amend this Declaration, in whole or in part, to include such additional real property, platted areas and uses, upon such different terms as may be applicable at the time, including, minimum floor areas, Assessments, construction standards and materials, setback requirements, Architectural Control Committee and Association Board of Director matters, and any other matters Declarant may determine.

**SECTION 12.2. Annexation by Declarant.** Pursuant to Section 12.1, Declarant may, without the consent or approval of the Association or any Members, annex to the Property, any lots currently platted as part of the Red Hawk Run subdivision, and/or the additional land adjacent thereto which is described on **Exhibit C** attached hereto and incorporated herein by reference (collectively, the “**Additional Land**”) from time to time, by a written instrument signed by Declarant and recorded with the Register of Deeds Office. Should Declarant develop land within the Additional Land within ten (10) years after the date of this Declaration, all or any portion of the Additional Land may be annexed to the Property and made subject to this Declaration without the assent of the Class A Members.

**ARTICLE 13.**  
**AVAILABILITY OF RECORDS**

Any Owner or first mortgagee of any Lot shall be entitled, upon reasonable request, to receive for inspection and for copying from the Association current copies of the Declaration, Articles of Incorporation, Bylaws, records and financial statements of the Association and such other documents as may be provided for in the inspection provisions of the Bylaws. Furthermore, any holder of a mortgage given on any Lot within the Property and any phases annexed thereto, shall be entitled to receive from the Association, without cost, a copy of the Association’s financial statement, if any.

**ARTICLE 14.**  
**RIGHTS OF FIRST MORTGAGEES**

Upon written request, any first mortgagee of a Lot shall be entitled to and shall receive from the Association notices of any of the following as shall be requested:

- (a) Any condemnation loss or casualty loss which affects a material portion of the Property and any phases annexed thereto or the Lot on which its mortgage is held;
- (b) Delinquency of assessments which remain uncured for a period of sixty (60) days or more;
- (c) Any lapse, cancellation, or modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any restoration or repair of the Property and any phases annexed thereto after partial condemnation or damage; and
- (e) Any termination of the legal status of the Property and any phases annexed thereto.

Any termination of legal status as provided in Subsection (e) above, shall require the consent of the holders of the mortgages on at least fifty-one percent (51%) of the Lots contained in the Property and any phases annexed thereto at the time thereof.

**ARTICLE 15.**  
**MUNICIPAL ORDINANCES PREVAIL**

None of the covenants, conditions, restrictions or provisions of this Declaration are intended to supersede or prevail over the ordinances of general applicability of the City, and in the event of any conflict, the applicable ordinances of the City shall supersede and prevail over the covenants, conditions, restrictions and provisions of this Declaration. However, no ordinance of the City controlling or regulating any act that is expressly limited, controlled or prohibited by the covenants of this Declaration shall operate to authorize or permit such act. The Association shall comply with all City ordinances and shall seek all necessary approvals and permits from the City and other applicable governmental entities for activities it undertakes within Common Area and Lots.

**ARTICLE 16.**  
**INSURANCE**

**SECTION 16.1. Casualty Insurance for Common Area.** The Association shall obtain and maintain a policy or policies of insurance with respect to the damage or destruction of Common Area, any improvements located thereon and to any other tangible assets of the Association, including coverage against damage or destruction by the perils of fire, lightning and those perils contained in an all risk form, and such other perils as the Board of Directors from time to time may determine should be included in such coverage, in an amount equal to one hundred percent (100%) of the insurable replacement cost thereof, without depreciation and with an agreed amount provision. Such insurance shall name as the insured, and the proceeds thereof shall be payable to the Association, as trustee. The proceeds of such insurance shall be made available, as the Board of Directors shall reasonably determine, for the repair, reconstruction, and restoration of such portions of Common Area and other insured items subject to the rights of the first mortgagees. To the extent feasible, all such policies of insurance shall (i) provide that the insurance shall not be invalidated by the act or neglect of Declarant, the Association, its Board of Directors, its officers, any Owner or occupant, or any agent, employee, guest or invitee of any of them, and (ii) shall contain an endorsement that such policies shall not be canceled without at least thirty (30) days' prior written notice to the Association, the Owners, and all first mortgagees of the Lots.

**SECTION 16.2. Liability Insurance Maintained by the Association.** The Association shall obtain and maintain a policy or policies of comprehensive general liability insurance insuring on a claims-made basis the Association, its directors, officers, the Owners, and their agents and employees against claims for personal injury, including death and property damage, arising out of any occurrence in connection with the ownership, occupancy, use, supervision, operation, repair, maintenance or restoration of Common Area, any improvements located thereon and to any other tangible assets of the Association, or in connection with any act or omission of or on behalf of the Association, its Board of Directors, agents or employees within the Property. Such policies shall be in the initial amount of One Million Dollars (\$1,000,000) for bodily injury, including death, and property damage arising out of a single occurrence, and shall contain a provision that they may not be canceled without at least thirty (30) days' prior written notice to the Association, the Owners, and the first mortgagees of the Lots.

**SECTION 16.3. Other Insurance.** The Association may obtain and maintain a policy or policies of insurance with reputable insurance carriers providing the following coverage:

- (a) Directors' and officers' liability insurance;
- (b) Fidelity insurance or bonds in reasonable amounts for all officers and employees having fiscal responsibilities, naming the Association as obligee; and
- (c) Such other insurance in such limits and for such purpose as the Association may, from time to time, deem reasonable and appropriate.

**SECTION 16.4. Waiver of Subrogation.** To the extent feasible, all policies of insurance obtained by the Association shall contain provisions that no act or omission of any named insured shall affect or limit the obligation of the insurance company to pay the amounts of any loss sustained. So long as the policies of insurance provided for herein shall state that a mutual release as provided for in this Section shall not affect the right of recovery thereunder, and further provide coverage for the matters for which the release herein is given, all named insureds and all parties claiming under them shall, and do by these presents, mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard or source covered by any insurance procured by the Association, regardless of the cause of damage or loss.

**SECTION 16.5. Insurance Premium Expense.** The expense of insurance premiums paid by the Association under this Article shall be an expense of the Association to which Base Annual Assessments collected by the Association from the Owners shall be applied.

## **ARTICLE 17. GENERAL PROVISIONS**

**SECTION 17.1. Enforcement.** Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Breach of any of the covenants shall not defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to said Lots or property, or any parts thereof, but such provisions, restrictions or covenants shall be binding and effective against any owner of said property whose title thereto is acquired by foreclosure, trustee's sale or otherwise. The Association shall be entitled to recover from any Owner against which it initiates enforcement, "**Breach Costs**" (which may include, without limitation, any costs incurred by Declarant or the Association in connection with the breach, whether or not legal proceedings are initiated, including fines and penalties promulgated by Association and the Association's costs in connection with exercising its rights pursuant to Section 8.19 hereof), the costs of preparing and filing a Complaint in such action and reasonable attorneys' fees, and in the event a judgment is obtained, such judgment shall include all Breach Costs. In addition, Breach Costs, fees and other costs incurred by the

Association against an Owner, whether or not proceedings are initiated, shall constitute a lien against such Owner's Lot which may be recovered in the manner provided in Section 5.1 hereof. Notwithstanding the foregoing, the City shall be authorized to enforce the terms and provisions of Article 11 hereof in any legal manner available in the event that the Association defaults in its obligation to enforce such terms and provisions and such default by the Association remains uncured for more than thirty (30) days following written notice from the City to the Association specifying the nature of such default (unless such default cannot reasonably be cured within such 30-day period, in which event the Association shall have a reasonable period to cure such default).

**SECTION 17.2. Declarant Liability.** Declarant shall have no responsibility or liability for: (i) the creation, formation, management or operation of the Association or the Committee; (ii) any actions taken or omitted to be taken by or on behalf of the Association as a result of, in connection with, under or pursuant to this Declaration or the Property; or (iii) any liabilities, obligations, debts, actions, causes of action, claims, debts, suits or damages incurred by or on behalf of or arising in connection with the Association, the Committee, the Property or the duties and obligations of the Association or Committee pursuant to this Declaration.

**SECTION 17.3. Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**SECTION 17.4. Covenants Run with the Land.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, the Association, or the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns for a period of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

**SECTION 17.5. Amendment.** This Declaration may be amended by Declarant without a vote of the lot owners as long as Declarant owns any lots in the Property, and may be amended by an instrument signed by Owners comprising not less than sixty-seven percent (67%) of the total votes collectively held by all classes of Members with the written consent of mortgagees holding at least fifty-one percent (51%) of the outstanding mortgages on the Property; **PROVIDED, HOWEVER,** until the completion of construction of residences on all lots within the Property, no such amendment shall be valid or effective without the written consent of Declarant unless such party waives its right to consent to such amendment. Any such amendment (other than amendments by Declarant) that has the effect of (i) terminating this Declaration or (ii) terminating the legal status of the Association shall require the written consent of mortgagees holding at least sixty-seven percent (67%) of the outstanding mortgages on the Property and any phases annexed thereto. Notwithstanding the foregoing, in the event Declarant desires to amend this Declaration: (x) to correct a technical or typographical error or to clarify any provisions herein which are otherwise vague, or (y) for the sole purpose of causing this Declaration to comply with the requirements of any statutes, ordinances, laws or regulations applicable thereto, Declarant shall give notice of any such amendments to all Owners and all mortgagees of Lots who have requested the same in writing. The failure to give such notice shall not affect the

validity or effectiveness of such amendment. In addition, Declarant may, without any consents: (i) amend this Declaration to annex the Additional Land to the Property and to ensure that the Declaration appropriately accommodates the annexation of the Additional Land, as provided in Section 12.1 hereof; and (ii) grant easements and enter into shared use agreements with neighboring homes associations regarding all or any portion of the Common Areas. In furtherance of the foregoing, a power coupled with an interest is hereby reserved to Declarant, as attorney-in-fact to so amend the Declaration as provided in this Section 17.5, and each deed, mortgage or other instrument with respect to a Lot and acceptance thereof shall be deemed a grant and acknowledgment of and a consent to such power to said attorney-in-fact. Any amendment must be recorded with the Register of Deeds Office.

**SECTION 17.6. Quorum.** Unless otherwise specified to the contrary in any provision of this Declaration, the presence of Members or of proxies entitled to cast ten percent (10%) of the votes of each class of membership shall constitute a quorum for any meeting of the Members of the Association. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth in the By-Laws of the Association and the required quorum at such subsequent meeting shall be fifty percent (50%) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**SECTION 17.7. Notices.** A written or printed notice personally delivered or deposited in the United States mail with postage thereon prepaid and addressed to the respective Owner or to Declarant or the Association shall be deemed to be sufficient and proper notice pursuant to the terms of this Declaration. Notices to Declarant and to the Association should be delivered or mailed to: FFBWC Investors, L.L.C., c/o Jack N. Fingersh, 1010 Walnut, Suite 500, Kansas City, Missouri 64106 or to such other address or addresses as the Declarant and Association may advise from time to time.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal on the date first written above.

**FFBWC INVESTORS, L.L.C.**, a Missouri limited liability company

By: [Signature]  
Name: Jack N. Fingersh  
Title: Manager

STATE OF Missouri  
COUNTY OF Jackson SS

I, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Jack N. Fingersh, personally known to me to be the Manager of FFBWC Investors, L.L.C., a Missouri limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he signed and delivered the said instrument on behalf of said company as the free and voluntary act and deed of said company.

GIVEN under my hand and Notarial Seal this 15<sup>th</sup> day of July, 2013.

[Signature]  
Printed name: Tara A. Post

Notary Public

My Commission Expires: 8-18-15

This instrument was prepared by and upon recording mail to:

Lewis, Rice & Fingersh, LC  
1010 Walnut, Suite 500  
Kansas City, Missouri 64106  
Attn: Paul Torline

TARA A. POST  
NOTARY PUBLIC-NOTARY SEAL  
STATE OF MISSOURI-COUNTY OF CLAY  
MY COMMISSION EXPIRES: AUGUST 18, 2015  
COMMISSION #11386563

**EXHIBIT A**

**Legal Description of Property**

Parcel 1:

All of RED HAWK RUN, a subdivision in Olathe, Johnson County, Kansas, EXCEPT Lots 10, 11, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 and 33.

Parcel 2:

All of RED HAWK RUN II, a subdivision in Olathe, Johnson County, Kansas, EXCEPT Lots 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 63, 64, 65, 66, 67, 68, 69, 70 and 71.

Parcel 3:

All of Red Hawk Run III, a subdivision in Olathe, Johnson County, Kansas, EXCEPT Lots 78 and 79.

**EXHIBIT B****Restrictions on Fences**

Lots within the Property shall be subject to the following restrictions with respect to fences:

1. All fencing must be approved in writing by the Appearance Control Committee.
2. No fencing shall be permitted on any of the Lots unless such fencing is a high quality cedar, wrought iron or wrought iron appearing aluminum fence.
3. Wood fences shall be stained and/or preserved in a generally natural color.
4. No wood fences shall be painted with opaque paint designed to completely hide the natural wood color.
5. No fence shall exceed 48" in height unless specifically approved in writing for a greater height by the Appearance Control Committee.
6. Location of fences shall generally follow the property lines unless otherwise approved in advance by the Appearance Control Committee; provided, however, that location of fences on all corner Lots shall not impare sight lines of motorists and fences shall be six to twelve inches inside the property line so as to avoid encroachment on adjacent Lots.
7. City of Olathe municipal codes shall apply regarding fence permits, placement and standards.

**EXHIBIT C****Additional Land**

All that part of the Northwest Quarter of Section 24, Township 13, Range 23, Johnson County, Kansas, described as follows: Beginning at a point on the West line of said Section 24, said point being 1041.63 feet South of the Northwest corner of said Section 24; thence North 89 degrees 54 minutes 57 seconds East parallel to the North line of said Section 24, a distance of 320.00 feet; thence North 00 degrees 00 minutes 00 seconds East, parallel to the West line of said Section 24, a distance of 226.63 feet; thence South 89 degrees 57 minutes 45 seconds East, a distance of 1007.55 feet to a point on the West line of Lot 33, TIMBERLANE ACRES, a subdivision in Johnson County, Kansas; thence South 00 degrees 03 minutes 38 seconds East, along the West line of said Lot 33, a distance of 513.97 feet to a point on the Westerly right of way line of the Atchison, Topeka and Santa Fe Railroad; thence Southwesterly along the Westerly right of way line of said Atchison, Topeka and Santa Fe Railroad on a curve to the right having a radius of 2789.93 feet a distance of 444.90 feet; thence South 33 degrees 29 minutes 28 seconds West, along the Westerly right of way line of said Atchison, Topeka and Santa Fe Railroad a distance of 899.14 feet to a point 180.00 feet North of the South line of the Northwest Quarter of said Section 24; thence South 89 degrees 55 minutes 44 seconds West, parallel to the South line of the Northwest Quarter of Section 24, a distance of 617.00 feet to a point on the West line of said Section 24; thence North 00 degrees 00 minutes 00 seconds East, along the West line of said Section 24, a distance of 1427.15 feet to the point of beginning,

EXCEPT                    any part in road right of way.

AND EXCEPT:            all that part now platted as RED HAWK RUN, a subdivision in Olathe, Johnson County, Kansas.

AND EXCEPT            all that part now platted as RED HAWK RUN II, a subdivision in Olathe, Johnson County, Kansas

AND EXCEPT            all that part now platted as RED HAWK RUN III, a subdivision in Olathe, Johnson County, Kansas