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Title of Document: Amended and Restated Estates of Prairie Haven
Area Homes Association Declaration

Date of Document: January 19, 2010

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

Grantee(s): Public

Legal Description: Exhibit "A"

Reference Book and Page: 5354/408; 6020/821

SCH. B EXCEPTION
ITEM # 40

**AMENDED AND RESTATED
ESTATES OF PRAIRIE HAVEN AREA HOMES ASSOCIATION
DECLARATION**

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

WITNESSETH:

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

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

WHEREAS, a document entitled "Estates of Prairie Haven Area Homes Association Declaration" ("Declaration") was recorded in the Office of the Register of Deeds of Johnson County, Kansas on October 30, 1997 as Document 2757132, at Book 5354, Page 408, encumbering a portion of the Property; and

WHEREAS, a document entitled "Amendment #1, Estates of Prairie Haven Area Homes Association Declaration" was recorded in the Office of the Register of Deeds of Johnson County, Kansas on January 19, 1999 as Document 2938653, at Book 6020, Page 821, amending the Declaration and encumbering a portion of the Property; and

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

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

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

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

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

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

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

NOW, THEREFORE, in consideration of the premises contained herein, Lone Elm Land Co., Inc. for itself and for its successors and assigns, and for its future grantees, hereby amends and restates the Declaration and with Olathe Haven Development Return, LLC and Haven Development VI, LLC subjects all of the above-described Property to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I. DEFINITIONS

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

1. "Approving Party" means (i) prior to the recording of the Certificate of Substantial Completion, the Developer (or its designees from time to time) and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Homes Association (or with respect to Exterior Structures and other matters assigned to it, the Architectural Committee).
2. "Board" means the Board of Directors of the Homes Association.
3. "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all or, at the Developer's discretion substantially all of the Lots in the District (as then composed or contemplated by the Developer) have been sold and the residence to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its discretion at any time and for any limited purpose hereunder.
4. "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees, and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, (ii) all landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the District, (iii) the Recreational Facilities, (iv) the Right of Way Amenities, and (v) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the District, whether or not any "Common Area" is located on any Lot.
5. "Developer" means Lone Elm Land Co., Inc., a Kansas corporation and its successors and assigns.
6. "District" means collectively all of the above-described Lots, all Common Areas, and all additional property which hereafter may be made subject hereto in the manner provided herein.

7. "Homes Association" means Estates of Prairie Haven Area Homes Association, a Kansas not-for-profit corporation formed by the Developer for the purpose of serving as the homes association for the District.
8. "Lot" means any lot as shown as a separate lot on any recorded plat of all of part of the District; provided, however, that if any owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the amount of annual and special assessments due with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified from time to time by Approving Party; and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one "Lot,"
9. "Owner" means the record owner(s) of title to any Lot, including the Developer.
10. "Recreational Facilities" has the meaning set forth below.
11. "Right of Way Amenities" has the meaning set forth below.

ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Membership in the Homes Association shall be limited to the Owners of Lots within the District and every such Owner shall be a member. The Homes Association shall have only one class of membership. 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.

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

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

ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

1. **Powers.** 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, in its discretion, to carry out and effectuate the purposes of this Declaration, including, without limitation:

- 1.1. To enforce, in its own 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; 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 parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general fund of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.
- 1.2. To acquire an down 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.
- 1.3. To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association and the property within the District.
- 1.4. To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.
- 1.5. To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer and the Homes Association and its members and the sharing of the expenses associated therewith.
- 1.6. 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 District, and the sharing of expenses related thereto.
- 1.7. To 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, and operation and maintenance of Common Areas.
- 1.8. To engage the services of a security guard or security patrol service.

- 1.9. 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 District; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the District neat in appearance and in good order.
 - 1.10. 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 District.
 - 1.11. To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines.
 - 1.12. To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.
2. **Duties.** In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to Owners within the District:
- 2.1. To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences).
 - 2.2. Except as otherwise provided herein below regarding the Recreational Facilities or in any agreement with the Developer, the Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by or for the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.
 - 2.3. The Homes Association shall comply with all obligations and pay all amounts due from it under this Declaration or any agreement regarding the Recreational Facilities, as contemplated herein.
 - 2.4. The Homes Association shall properly maintain the right of Way Amenities and otherwise satisfy its and the Owners' obligations with respect thereto, as contemplated herein.

ARTICLE IV. ANNUAL ASSESSMENTS

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the

District, other than Lots then owned by the Developer and any Lots in the 4th Plat upon which a finished home has not been constructed and occupied as a residence, shall be subject to an annual assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article. The amount of such annual assessment per Lot shall be fixed periodically by the Homes Association, and shall initially be, until further action of the Homes Association, Three Hundred Thirty Dollars (\$330.00) per year.

2. The rate of annual assessment upon each Lot in the District may be increased (a) by the Board from time to time, without a vote of the members, by up to ten percent (10%) over the rate of annual assessment in effect on the preceding May 1st, or (b) by any amount by a vote of the members at a meeting of the members called for that purpose and of which notice is duly given and if a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase; provided, however, that 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 herein.
3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 1998) and shall be due and payable on May 1st of each year; provided, however, that (a) the first assessment for each Lot shall be due and payable only upon initial occupancy of the residence on such 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 Recreational Facilities for the remainder of the year, as determined by the Board) and (b) any increase that occurs under the provision in subsection 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 Recreational Facilities for the remainder of the year, all as determined by the Developer). In the effective date of any increase in the rate of assessment is other than May 1st, the prorated portion (as determined by the Board) of the amount of such increase for the remainder of such year shall be due and payable on such effective date. No Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first annual assessment has been paid with respect thereto.
4. In the event of a transfer of ownership of a Lot during any year, the Owner of the Lot shall pay an additional assessment of One Hundred Fifty Dollars (\$150) for the administrative costs and expenses incurred in effecting such a transfer by the Association.

ARTICLE V. SPECIAL ASSESSMENTS

In addition to the annual assessments provided for herein, the Board (a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent the Homes Association expends any money (for services or materials, or legal fees and expenses) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon) and (b) shall levy from

time to time special assessments against each and every Lot (other than any Lot then owned by the Developer and any Lots in the 4th Plat upon which a finished home has not been constructed and occupied as a residence) in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as specified herein that require any expenditure during any period in an amount to excess of the general funds of the Homes Association available therefore. Each such special assessment shall be due and payable upon giving notice of the assessment to such Owner.

ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment within thirty (30) days after the due date thereof, then thereafter such assessment shall be delinquent and bear interest at the rate of ten percent (10%) per annum from the due date until paid, along with a late fee of One Hundred Dollars (\$100), which interest and late fee shall become part of the delinquent assessment and the lien on the Lot. Should it become necessary to engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including filing fees, court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with interest thereon and collection costs, shall also be the personal obligation of the Owner of the Lot at the time when the assessment became due.
2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to such foreclosure or deed in lieu thereof but shall not release such Lot from liability for any assessment applicable to periods thereafter.
3. Payment of a delinquent assessment may be enforced by judicial proceedings against the Owner personally or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the office of the Register of Deeds of Johnson County, Kansas, 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 an administrative fee of Fifty Dollars (\$50.00), which fees shall be added to the amount of the delinquent assessment and the lien on the Lot.
4. Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under the execution of judgment establishing the same.

5. The Homes Association may cease to provide any or all of the services (including use of the Recreational Facilities) 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 any assessment due under this Declaration, and no such cessation of services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Homes Association.

ARTICLE VII. LIMITATIONS ON EXPENDITURES

Except with respect to its duties relating to the Common Areas, the Homes Association shall at no time expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus and available reserves which it may have on hand from prior years; nor shall the Homes Association have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the assessments for the future year, except for 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 except for matters contemplated in Section 2 of Article III above.

ARTICLE VIII. NOTICES

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

ARTICLE IX. EXTENSION OF DISTRICT

The Developer shall have, and expressly reserves, the right (but not the obligation), from time to time, to add to, or remove from, the existing District and to the operation of the provisions of this Declaration such other adjacent or nearby (without reference to any street, golf course, park or right of way) lands as it may now or hereafter acquire (regardless of whether the additional property is part of the property platted as Estates of Prairie Haven or is known by name other than Estates of Prairie Haven) by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such property to all of the provisions hereof as though such land has been originally described herein and subjected to the provisions hereof, provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in its discretion.

ARTICLE X. AMENDMENT AND TERMINATION

1. This Declaration may be amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (a) the Owners of at least two-thirds (2/3) of the Lots within the District as then constituted and (b) if prior to the recording of the Certificate of Substantial Completion, the Developer. The foregoing notwithstanding, this Declaration may not be amended, modified or terminated with regard to any Lots in the 4th Plat without the approval of at least two-thirds (2/3) of the Owners of such Lots.
2. Anything set forth in this 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, all as from time to time amended or supplemented, if either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the District or any part of the District or any Lot in the District, for federally-approved mortgage financing purposes under applicable Veterans Administration, Federal Housing Administration or similar programs, laws and regulations.
3. If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of twenty-one (21) years after the death of the last survivor of the now- living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as of the date of such execution.

ARTICLE XI. ASSIGNMENT OF RIGHTS OF DEVELOPER

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

ARTICLE XII. RECREATIONAL FACILITIES

1. The Developer shall have the right (but is not obligated) to construct and erect a swimming pool, parking lot and other recreational facilities ("Recreational Facilities") in one or more places within the District or on property near the District and to make such facilities available for use by residents of the District and, at the Developer's option, residents of other nearby subdivisions. The size, number and components of the Recreational Facilities shall be determined by the Developer in its absolute discretion.
2. As to Recreational Facilities constructed and made available for use by residents of the District, the following shall apply:
 - 2.1. Upon substantial completion and opening for use (as determined by the Developer), the Developer shall convey, without charge and free and clear of any mortgages or similar liens, all of its lights, title and interest in the Recreational Facilities (or the completed portion thereof) to the Homes Association and, if applicable, any other homes associations whose members are entitled to use the facilities. Thereafter, the Homes Association shall cause insurance to be continuously maintained on the Recreational Facilities and, so long as Developer owns any Lots in the District, cause the Developer to be named as an additional insured on such insurance coverage.
 - 2.2. The Homes Association shall pay its pro rata share (as defined below) of all (i) operating expenses (as defined below), net of operating income, and (ii) all post construction capital expenditures (as defined below) relating to the Recreational Facilities.
 - 2.3. For purposes hereof, the "operating expenses" of the Recreational Facilities generally has the meaning attributed thereto under generally accepted accounting principles, consistently applied, but shall not include (i) any costs of the Developer of acquiring, developing, improving, constructing or erecting the Recreational Facilities or the site on which such facilities are located, (ii) any depreciation or amortization of the costs described in clause (i) above, (iii) any financing or debt service expenses related to the costs described in clause (i) above, or (iv) any costs attributable or allocable to the use of the Recreational Facilities or any part thereof by the Developer, any construction company, any real estate agent or any other similar party as an office.
 - 2.4. For purposes hereof, "post construction capital expenditures" means any expenditures made or incurred after the completion of the initial (as specified by the Developer) Recreational Facilities for equipment, furniture, or other capital assets, including the expansion or addition of any facilities, and any other expenditures that would be capitalized under generally accepted accounting principles, consistently applied.
 - 2.5. For purposes hereof, the Homes Association's "pro rata share" of the applicable amounts for any year shall be equal to the products of (i) the aggregate applicable amounts for the period, multiplied by (ii) a fraction the numerator of which is the

number of Lots that are then obligated to pay annual homes association dues and the denominator of which is the sum of (A) the numerator plus (B) the number of residential units outside the District that are using the Recreational Facilities; provided, however, that in computing such pro rata share (which shall be done by the Developer), there shall be taken into account any lots that were subject to payment of homes association dues for only part of the year.

- 2.6. The Homes Association shall pay the amounts due from it under paragraph (b) above out of the dues collected from the Owners of the Lots subject to this Declaration.

ARTICLE XIII. RIGHT OF WAY AMENITIES

1. The City has agreed to allow the Developer to construct certain Common Areas improvements within certain of the public right-of-way associated with streets in the District (the "Right of Way Amenities"), subject to the terms and conditions of a certain Right of Way Maintenance Agreement between the Developer and the City. The following provisions of this Article are required to be in this Declaration pursuant to such Right of Way Maintenance Agreement.
2. The Right of Way Amenities, although located within City right-of-way, are the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill the obligations of the Homes Association under this Article. Such delegation shall not, however, relieve the Owners of their responsibilities under this Article.
3. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right of Way Amenities to be located in its right-of-way, or otherwise acting or failing to act with respect to maintenance of the Right of Way Amenities. The City further is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Right of Way Amenities.
4. The Homes Association, or upon its failure, the Owners, will indemnify and hold harmless the City, the Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses, including reasonable attorneys fees, that may be incurred or suffered by any of them as a result of or in connection with any claims that may be asserted against any of them in connection with the Right of Way Amenities. The Homes Association, or upon its failure, the Owners, will further be required to promptly reimburse the City for any public funds the City may expend with respect to maintenance of the Right of Way Amenities in the event the Homes Association fails to maintain the same, although the City is under absolutely no obligation to so maintain.

5. The Developer, the Homes Association and the Owners understand and agree, if the City or the City's designee does damage to the Right of Way Amenities, repair or replacement of the same shall not be the responsibility of the City or the City's designee.
6. The Developer, the Homes Association and the Owners understand and agree, should the City determine that the Right of Way Amenities are endangering the public health, safety or welfare or have become unsightly or a nuisance, or interfere in any way with the City's use of the right-of-way, that upon request of the City, the Homes Association will remove or cause to be removed any or all Right of Way Amenities from the City's right-of-way. Should the Homes Association fail to comply with the City's removal request, the City may remove the same and the Homes Association, or upon its failure, the Owners, shall be obligated to reimburse the City for the removal.
7. The Homes Association, or upon its failure, the Owners shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the maintenance of the Right of Way Amenities and the covenants contained in this Article.
8. The Developer and the City shall be third-party beneficiaries of all provisions of this Declaration relating to the Right of Way Amenities and the Developer and the City shall have the right to enforce all restrictions, obligations and other provisions regarding the Right of Way Amenities.
9. The written consent of the City shall be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision hereof regarding the Right of Way Amenities. If the Homes Association requests such consent, it shall be made in writing to the City Clerk. The City shall have sixty (60) days, upon receipt of the same, to rule on the request.

ARTICLE XIV. DEVELOPER ACTING FOR ASSOCIATION

Until relinquished by written document, the Developer shall have the right at its option to perform the duties, assume the obligations, levy and collect the assessments, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developer. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of the Developer and its relinquishment in writing of such rights. The Developer may, by appropriate document made expressly for that purpose, assign or convey to the Association any or all of the rights, reservations and privileges reserved by it in this Declaration, and upon such assignment or conveyance being made, the Association shall exercise and assume such rights.

By acquiring an interest in or to any Lot in the District, such person or entity hereby waives any and all claims or causes of action against Developer, Haven Development VI, LLC, or any officer, director, representative or agent thereof, from and against any action or inaction of them with regard to this Declaration, including but not limited to any right, duty or obligation as contained herein.

ARTICLE XV. OBSERVATION OF LAWS

The Association shall at all times observe all State, County, City and other laws, and if at any time any of the provisions of this Declaration shall be found to be in conflict therewith, then such parts of this Declaration as are in conflict with such laws shall become null and void, but no other part of this Declaration not in conflict therewith shall be affected thereby. The Association shall have the right to make such reasonable rules and regulations, penalties for violation thereof and provide such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, subject, however, to the limitation of its rights to contract as are herein provided.

ARTICLE XVI. CONTRIBUTIONS MADE BY DEVELOPER

As conditions precedent to the development of the District, Developer has been required to pay to the City and other authorities certain fees, charges and impositions for streets, parks, utilities and other off-site improvements. Each grantee of the Developer or of any Owner of a Lot, by the acceptance of a deed, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each occupant of a Lot, and the heirs, successors and assigns of the foregoing persons, hereby releases the Developer, its successors, agents, officers, members, stockholders and assigns from any obligation to remit any part of such fees, charges and impositions to him, her or it in the event any of the same are declared invalid or illegal, or refunded for any reason, the refund or return of same to the Developer notwithstanding; it is expressly understood that Developer shall have the sole right to make claim for and receive any such refund or return.

ARTICLE XVII. OPTION TO EXCLUDE CERTAIN REAL PROPERTY

The Developer shall have the power at any time to waive or modify any or all of the restrictions or covenants contained herein as to real property in the District remaining undeveloped or unimproved (without a finished, habitable residence) and under the ownership of Developer, or to whom it assigns its rights as Developer hereunder. The Developer specifically reserves the right carry on its business in the subdivision, so long as Developer owns land within the subdivision or new homes are being constructed, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessary or convenient for the business of Developer.

ARTICLE XVIII. ENFORCEMENT

In addition to any other remedy provided herein, the Association, and/or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by this Declaration, the Declaration of Restrictions, the Articles of Incorporation or the Bylaws. In any such event, the prevailing party shall be entitled to recover as an additional item of damage, all attorney fees and costs incurred therein.

ARTICLE XIX. COVENANTS RUNNING WITH THE LAND


1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the District. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

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

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


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

LONE ELM LAND CO., INC.

By 
VICTOR A. APPLEBAUM
President

**OLATHE HAVEN DEVELOPMENT RETURN,
LLC**

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

By 
WALTER C. CORBELLO
Sr. Vice President

HAVEN DEVELOPMENT VI, LLC

By *Victor A. Applebaum*
VICTOR A. APPLEBAUM
Managing Member

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Before me, a Notary Public, in and for said county and state, personally appeared VICTOR A. APPLEBAUM, President of LONE ELM LAND CO., INC., a Kansas corporation, which person is personally known to me to be such officer as herein above described, and who is personally known to me to be the same person who executed, as such officer, the within instrument, and acknowledged that he executed the same as the free act and voluntary deed of said corporation.

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

Christine M. Hefferman
Notary Public

My Commission Expires:

11/20/2011



STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

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

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

Anita L. Kjellerson
Notary Public

My Commission Expires:

9/16/13

ANITA L. KJELLERSON
Notary Public-Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires Sept. 16, 2013
Commission # 09401756

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

Before me, a Notary Public, in and for said county and state, personally appeared **VICTOR A. APPLEBAUM**, managing member of **HAVEN DEVELOPMENT VI, LLC.**, a Kansas limited liability company, which person is personally known to me known to me to be such officer as herein above described, and who is personally known to me to be the same person who executed, as such officer, the within instrument, and acknowledged that he executed the same as the free act and voluntary deed of said company.

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

Christine M. Heffernan
Notary Public

My Commission Expires:

11/20/2011



EXHIBIT A

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

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

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

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

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