

Revised 4/9/25

**AMENDED AND RESTATED DEER CREEK COURTS HOMES
ASSOCIATION, INC. DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS AND ASSESSMENTS**

**When recorded return to:
Fisher, Patterson, Saylor & Smith LLP
9393 W 110th St, Ste 300
Overland Park, KS 66210**

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**AMENDED AND RESTATED DEER CREEK COURTS HOMES ASSOCIATION, INC.
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND ASSESSMENTS**

THIS AMENDMENT is made this ____ day of _____, ~~2025~~ by the undersigned parties.

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WHEREAS, Deer Creek Associations, Inc. ("Developer") caused a certain Deer Creek Courts Declaration of Restrictions (the "Declaration") to be filed in the Register of Deeds Office of Johnson County, Kansas as Document 1935935, in Book 3146, at Page 597, on April 2, 1990; and

WHEREAS, the Developer caused a certain Deer Creek Courts Homes Association Declaration (the "Homes Association Declaration") to be filed in the Register of Deeds Office of Johnson County, Kansas as Document 1939310 in Book 3154, at Page 411, on April 17, 1990; and

WHEREAS, the Developer and/or its assignee has relinquished its rights under the Declaration and Homes Association Declaration to Deer Creek Courts Homes Association, Inc. (the "Association"), a Kansas not for profit corporation; and

WHEREAS, pursuant to Section 17 of the Declaration, the Declaration may be amended by written agreement signed by both the Owners of a majority of the Lots and the Association; and

WHEREAS, pursuant to Article XIII of the Homes Association Declaration, the Homes Association Declaration may be amended by written agreement signed by the Owners of a two-thirds (2/3) majority of the Lots.

WHEREAS, the undersigned parties, representing more than a two-thirds (2/3) majority of the owners of property subject to it, desire to amend and restates said Declaration and Homes Association Declaration in their entirety, by consent; and

WHEREAS, the real property (the "District") subjected to said above-mentioned documents and bound by this Amendment is set forth on Exhibit "A" attached hereto.

NOW, THEREFORE, in consideration of the benefits to be derived from said amendments and by virtue of the right of a two-thirds (2/3) majority of owners to amend said documents by consent, the same are hereby amended in total as follows:

**ARTICLE I
DEFINITION OF TERMS USED**

For purposes of this Declaration, the following words and phrases shall have the following meanings:

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1. “**Act**” means the Kansas Uniform Common Interest Owners Bill of Rights Act, K.S.A. 58-4601 et seq.
2. “**Annual Assessment**” means the annual sum attributable to each Lot and due to the Association pursuant to the budget adopted under Article VI Section 1 of this Declaration.
3. “**Architectural Control Committee**” or “**ACC**” means a committee comprised of at least three members of the Homes Association who shall be appointed by the Board of the Homes Association in an impartial manner from the members of the Homes Association who indicate a willingness to serve on the committee.
4. “**Association**” or “**Homes Association**” means Deer Creek courts Homes Association, Inc., Kansas not-for-profit corporation.
5. “**Board of Directors**” or “**Board**” means the body, regardless of name, designated in the Declaration or Bylaws, which has the power to act on behalf of the Association.
6. “**Common Area**” means (i) the street right-of-ways, (ii) streets and street islands, (iii) gateways, entrances, monuments and other similar ornamental areas and related utilities and landscaping constructed or installed by the Developer at or near the entrance of any street, (iv) berms, (v) sprinkler systems installed by the Developer, and (vi) all other areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment thereof is intended for all of the Owners within the District, whether or not any Common Area is located on any Lot.
7. “**Developer**” means and refers to Deer Creek Associations, Inc., a Kansas corporation, and its successors and assigns.
8. “**District**” means all of the above-described Lots in Deer Creek Courts, all Common Area, and all additional property which hereafter may be made subject hereto in the manner provided herein.
9. “**Exterior Structure**” means any structure or erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, dog house or other animal shelter, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, pickleball court, swimming pool, hot tub, basketball goal, swing set, trampoline, sandbox, Playhouse, tree house or other recreational or play structure.
10. “**Lot**” means any lot as shown as a separate lot on any recorded plat of all or part of the District; provided, however, that if an Owner owns all or parts of one or more adjacent lots upon which only one residence has been, is being, or will be erected, then such adjacent property under common ownership shall be deemed to constitute only one Lot).

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11. “**Owner**” means the record owner in fee simple of any Lot in the District, and for purposes for all obligations of the Owner hereunder, shall include all family members and tenants of such Owner and all of their guests and invitees.

12. “**Special Assessment**” means a sum, in addition to the annual assessment, attributable to each Lot and due to the Association as specifically levied to defray, in whole or in part, the costs of certain capital improvements under Article VI Section 2 or to address certain emergencies under Article VI Section 3 of this Declaration.

13. “**Street**” means any public or private street, road, terrace, circle or boulevard shown on any recorded plat of all or any part of the District.

ARTICLE II

PERSONS BOUND BY THIS DECLARATION

All persons, corporations or other entities who now own or shall hereafter acquire any interest in the above-described Lots and hereby restricted shall be taken to hold and agree and covenant with the other Owners of said Lots, and with their successors and assigns, to conform to and observe the following covenants, restrictions and stipulations as to the use thereof and the construction of residences and improvements thereon.

ARTICLE III

RESTRICTIONS

1. **Use of Land.** None of the Lots may be improved, used or occupied for other than single-family, private residential purposes, and no duplex flat or apartment house, or multifamily residence, although intended for residential purposes, may be erected thereon. Any residence erected or maintained on any of the Lots hereby restricted shall be designed for occupancy by a single family. No residential building which has previously been at another location shall be moved on to any Lot. No “earth” home shall be permitted. No trailer or outbuilding erected on any Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any residence of a temporary character be erected on any of such Lots or used for human habitation.

2. **Building Material Requirements.** Exterior walls of all residences and all appurtenances thereto shall be of stucco, brick, stone, wood shingles, wood siding, or any combination thereof, or such other materials as may be deemed by the ACC or Board in writing to be compatible therewith. All windows shall be constructed of glass, wood, metal clad and wood laminate, or any combination thereof; provided, however, that storm windows may be constructed of colored metal (other than silver). All exterior doors and louvers shall be constructed of wood, colored metal (other than silver) clad and wood laminate, colored metal (other than silver) and glass, or any combination thereof. All exterior doors shall be functional. All roofs shall be composition shingles, slate tile, clay, concrete or similar or other materials approved by the ACC or Board in writing. No wood shake shingle roofs shall be permitted without the approval of the ACC or Board in writing. Any building products that may come into general usage for dwelling construction of comparable quality

and style in the area after the date hereof shall be acceptable if approved in writing by the ACC or Board. All wood exteriors, except roofs and shake side walls, shall be covered with a workmanlike finish of two coats of high-quality paint or stain. No building shall be permitted to stand with its exterior in any unfinished condition for longer than five months after commencement of construction. All exterior basement foundations and walls which are exposed above final grade shall be painted the same color as the residence or, at the ACC or Board's discretion, covered with siding compatible with the structure.

3. Approval of Plans and Post-Construction Changes.

(a) Notwithstanding compliance with the provisions of Article III, Section 2 above, no residence or Exterior Structure may be erected upon or moved on to any Lot unless and until the building plans, specifications, materials, location, front and rear elevations, lot grading plans, general landscaping plans, and exterior color scheme have been submitted to and approved in writing by the Board, or in the case of Exterior Structures as provided in Article III, Section 6 below, the ACC. Nor shall any change or alteration in such building plans, specifications, materials, location, elevation, grading plans, landscaping plans or exterior color scheme thereof be made until such change or alteration has been submitted to and approved in writing by the Board or the ACC, as the case may be. All building plans and plot plans shall be designed to minimize the removal of existing trees, shall designate those trees to be removed and shall protect those trees that are to remain. In the event the Board fails to approve or disapprove such plans or changes within sixty (60) days after said plans or changes have been submitted in writing, approval will not be required, and this Section will be deemed to have been satisfied.

(b) Following the completion of construction of any residence or Exterior Structure, no exterior colors or general landscaping thereof shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Board or the ACC, as the case may be. All replacements of all or any portions of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure unless the changes have been submitted to and approved in writing by the Board or the ACC, as the case may be.

(c) No changes in the final grading of any Lot shall be made without the written approval of the Board.

4. Set Backs. No building, exclusive of porches, porticoes, stoops, balconies, Bay and other windows, eaves, chimneys and other similar projections, shall be closer to any St. and the building setback lines, if any, shown on the recorded plat.

5. Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Board in writing, construction of any residential building on a Lot shall be commenced within ninety (90) days following the Board's approval of the plans contemplated in Article III, Section 3 above, and shall be completed within two-hundred seventy (270) days after such commencement. In the event such construction is

not commenced within such ninety (90) day period (or extension thereof), the Board shall have, prior to commencement of construction, the right to require the Owner to resubmit the plans contemplated in Article III, Section 3 above for Board approval.

6. Exterior Structures. No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) with and pursuant to the advance written approval of the ACC, and (ii) in compliance with the additional specific restrictions set forth below. In the event the ACC fails to approve or disapprove such Exterior Structure within sixty (60) days after said proposal has been submitted to it, approval will not be required, and this Section will be deemed to have been satisfied. Any decision of the ACC shall be final except that any Owner who is aggrieved by any action or forbearance from the ACC (or by any policy, standards or guidelines established by the ACC) may appeal the decision of the ACC to the Board and the Board shall decide all such appeals.

(a) Fences and privacy screens are permitted as follows: fences and privacy screens shall be consistent with the standard designs, heights and materials to be selected by the ACC. All fences and privacy screens shall be constructed with the finished side out. Fences and privacy screens shall be constructed only of wrought iron or similar ornamental metal type materials as approved by the ACC. No fence or privacy screen shall extend toward the front of the residence beyond the rear corners of the residence. Fences and privacy screens shall comply with all ordinances of the City of Overland Park, Kansas. All existing fences that were constructed before the date of this Amendment and do not conform to these fencing restrictions are permitted to remain as they are. However, in the event such fence requires substantial repair, replacement or reconstruction, the new or repaired fence must be brought into compliance with these restrictions.

(b) All recreational or play structures (other than basketball goals) shall be located behind the back building line of the residence.

(c) No above-ground swimming pools shall be permitted. All pools and hot tubs shall be fenced or otherwise adequately screened. All pools and hot tubs shall be kept clean and maintained and operable condition.

(d) All outside dog houses and other animal shelters shall be located in the backyard, shall be up against or within two (2) feet of the residence, shall be painted (where appropriate) the same color as the residence and shall have roofs (where appropriate) that are compatible with the residence.

(e) No Exterior Structure that is prohibited under Article III, Section 7 below shall be permitted under this Article III, Section 6.

7. Buildings or Other Uses Other Than for Residential Purposes; Noxious Activities; Miscellaneous.

(a) Except as otherwise provided in Article 3, Section 1, above, no residence or Exterior Structure shall ever be placed, or erected or used for business, professional, trade

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or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with the applicable ordinances of the City of Overland Park, Kansas.

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

(c) No vehicle, trailer, bus, van, camper, boat or similar apparatus shall be parked, left, maintained, repaired, serviced, or stored on any Lot or any yard. No truck or combination of truck and trailer in excess of 10,000 GVW or similar commercial vehicle shall be parked, left, or stored on any driveway or street for more than an eight-hour period. No trailer, bus, van, camper, boat or similar apparatus shall be parked, left, or stored in any driveway or street for more than seventy-two (72) hours in any two-week period. No construction dumpster, storage container, moving pod or similar unit shall be parked, left, or stored in any driveway or street for more than seventy-two (72) hours in any two-week period. It is the intent of the parties here too that all automobiles shall be kept in an enclosed garage whenever possible. No unlicensed or inoperative vehicle shall be stored or parked other than inside an enclosed garage. Motorized vehicles shall not be operated on any Lot or Common Area, other than in the street.

(d) No television, radio, citizen's band, short wave or other antenna, solar panel, clothesline or pole, or other unsightly projection shall be attached to the exterior of any residence or erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution or applicable federal statute, the Architectural Control Committee shall have the right to establish rules and regulations regarding the location, size, landscaping, and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood, and any such rules and regulations shall be binding upon all of the Lots. Satellite dishes up to 18 inches in diameter may be permitted with the location to be approved by the ACC. Solar panels may be permitted with the location to be approved by the ACC. No lights or other illumination shall be higher than the residence.

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

(f) No garage sales, estate sales, sample sales or similar activities shall be held within the District without the written consent of the Board.

(g) No mailbox or standard therefor shall be erected or installed without the prior approval of style, material, construction and location being granted by the ACC.

(h) No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard. Provided, however, stereo speakers and other sound devices shall be allowed on the exterior of any residence or any yard, with prior approval by the ACC. The volume level of such speakers shall be at a reasonable level.

(i) All residential service utilities shall be underground.

(j) In the event of vandalism, fire, windstorm or other damage, no buildings shall be permitted to remain in damaged condition for longer than three (3) months.

8. Animals. No animals of any kind shall be raised, bred, kept or maintained on any Lot, except dogs, cats and other common household pets may be kept or maintained so long as (a) they are not raised, bred, kept or maintained for commercial purposes; (b) they do not constitute a nuisance; and (c) the ordinances of the City of Overland Park and other applicable laws are satisfied. All pets shall be confined to the Lot of the Owner except when on a leash controlled by responsible persons. Owners shall immediately clean up after their pets on all streets, Common Areas and Lots owned by others. No Owner shall have more than three (3) dogs or cats or a combination thereof on any one Lot.

9. Landscaping and Lawns. The Owner of each Lot at all times shall keep his lawn, including areas between his residence and any adjacent street, fully sodded. The Owners of each Lot shall landscape the Lot to the same standards as that generally prevailing throughout the District. The Owners of each Lot shall properly maintain all trees and landscaping. All vegetable gardens shall be located in the back yard.

10. Drainage. No water from any roof, downspout, basement or garage drain or surface drainage shall be placed in or connected to any sanitary sewer line.

11. Leasing Restrictions. After the recording of this Declaration, no Lot, residence or any part thereof shall be leased or used for transient or hotel purposes, which is defined as: (i) lease of less than thirty (30) days duration or under which occupants are provided customary hotel services such as room service for food or beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) lease to roomers or boarders, that is, lease to one or more persons of a portion of a residence only. No lease may be of less than an entire residence. Any lease agreement shall be in writing, shall require that the tenant and other occupants comply with all provisions of the Declaration, shall provide that the lease shall be subject in all respects to the provisions of the Declaration, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the tenant to comply with the terms of the Declaration shall be a default under the lease. Prior to the commencement of the term of a lease, the Lot Owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect and shall provide a copy of such lease for approval by the Board, which must be approved prior to commencement of the term of the lease. Notwithstanding the existence of a lease, the Owner shall remain liable for all

obligations, including, without limitation, the payment of ~~assessments~~, under this Declaration with respect to the Lot. Owners may apply for a hearing before the Board for temporary or special exemptions to this lease restriction in case of hardship. Permission to lease will be granted at the sole discretion of the Board.

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ARTICLE IV

HOMES ASSOCIATION MEMBERSHIP, VOTING AND MANAGEMENT

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 only have one class of membership. Members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest in any Lot, all such persons shall be members and the vote shall be exercised as they, among themselves, determine; but in no event shall more than one vote be cast with respect to any one Lot. The right of any member to vote in person or by proxy on issues involving assessments and fees may be suspended by action of the Board during any period any member is delinquent in paying the assessments provided for hereunder.

The affairs of the Association shall be managed by a Board of Directors consisting of at least three (3) directors, elected by the members as provided in the Articles of Incorporation and Bylaws of the Association.

ARTICLE V

POWERS AND DUTIES OF THE HOMES ASSOCIATION

1. Nondiscretionary Duties. In addition to the duties required by other portions of this Declaration or by law, the Homes Association shall have the following duties and obligations with respect to providing services to owners within the District and maintaining the exterior private property:

(a) To spray, chemically treat, trim, mow and clip (but not to plant, remove, replant, re-seed or replace) all grass located on all Lots.

(b) To provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day shall be the same for all residences).

(c) To provide for the plowing and removal of snow from drives and sidewalks after any accumulation of three (3) inches or more.

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3. Discretionary Powers and Duties. In addition to the powers granted by other portions of this Declaration or by law, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by its Board of Directors to carry out and effectuate the purposes of this Declaration, including without limitation:

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(a) To enforce either in its own name or in the name of any Owner, any or all building restrictions and use restrictions, or other covenants, obligations or restrictions which may have been heretofore or may hereafter be imposed upon any of the Lots or the District, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications of restrictions or reservations being made by the parties having the right to make such changes, releases or modifications as are permissible in the deeds, declarations or contracts in which such restrictions and reservations are set forth, nor shall it serve to prevent the assignment of those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as herein provided for. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

(b) To manage and control as trustee for its members all public streets, sidewalks and other public places shown on the plat of the District and any and all improvements thereon, provided that such management and control of said places and improvements shall at all times be subject to that had and exercised by any city, county and state, or any of them, in which said places and improvements are located.

(c) To provide for the collection and disposal of rubbish and garbage, when adequate services of that type are not available from any public source.

(d) To care for, spray, trim, protect and replant trees on all streets and other public places where trees have once been planted, when such services are not available from any public source.

(e) To manage, control, operate, maintain, construct, reconstruct, and maintain common areas and amenities, as the Association deems advisable and in the interest of the members including but not limited to recreational facilities, if any.

(f) To mow, care for, maintain and remove all rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the subdivision neat in appearance and in good order.

(g) To provide for the plowing and removal of snow from sidewalks and drives when such services are not available from any public source.

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(h) To provide such lights as the Association may deem advisable on streets, parking lots, pedestrian ways, gateways, entrances or other features, and in all other public and common areas, when such facilities are not available from any public source.

(i) To provide for the cleaning of street gutters, catch basins, sidewalks and pedestrian ways, and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.

(j) To erect and maintain signs for the marking of streets and safety signs for the protection of children and other persons when such signs are not available from any public source.

(k) To exercise control over such easements as it may require from time to time.

(l) To acquire and own title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association and to pay taxes and special assessments on such real estate as may be owned by it; and to pay such taxes and assessments as may be assessed against lands in streets, common areas, and other public or semi-public places within the district.

(m) To levy and collect assessments which are provided for in this Declaration.

(n) To provide for the maintenance of swimming pools, playgrounds, tennis courts, public and private streets, parking areas, walks, pedestrian ways, gateways, entrances, drinking fountains and ornamental features now existing or which may hereafter be erected or created in any public or private street, District, Common Area, parking area or other public place shown on the plat or created by separate instrument from land included as part of the District or as designated as common area on the plat of any additional land which may be later added to the District as provided herein.

(o) To make reasonable rules and regulations which shall govern the use of Common Areas or Tracts, including but not limited to restricting the use of Common Areas from those individuals or members who refuse to comply with the Association's reasonable rules, provided however, that no restriction as to use shall impair that member's right to vote in the Association, and no restriction as to use shall relieve that member's obligation to pay common assessments which are provided for in this Declaration.

(p) To obtain such insurance as the Association deems advisable, including but not limited to fire and extended coverage, covering the full insurable replacement value of the common areas; liability insurance insuring the Association against any and all liability to the public, to any owner, or to the invites or tenants of any owner arising out of their occupation and/or use of the common areas; workmen's compensation insurance to the extent necessary.

(q) To hire or employ such individuals, firms or management companies which the Association shall deem appropriate to carry out the duties of the Association, including but not limited to management, maintenance, accounting and legal services, and to delegate such responsibilities as it deems advisable.

4.

- (a)
- (b)
- (c)

Deleted: In addition to the duties required by other portions of this Declaration or by law, the Homes Association shall have the following duties and obligations with respect to providing services to owners within the District and maintaining the exterior private property:...

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Deleted: To provide for the plowing and removal of snow from drives and sidewalks after any accumulation of three (3) inches or more...

ARTICLE VI
METHOD OF PROVIDING GENERAL FUNDS

1. Assessments. For the purpose of providing general funds to enable the Association to perform the duties herein provided for, all Lots shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association quarterly in advance by the respective Owners of the said assessable lands subject thereto, which said assessable land shall be deemed to be all of the above enumerated Lots in the aforesaid plat of the District, together with such other Lots as may from time to time be added to these restrictions as provided herein. The Board shall from time to time, but at least annually, fix and determine a budget representing the sum or sums necessary and adequate for the continued operation of the Association. The Board shall determine the total amount required, including the operational items such as insurance, repairs, replacements, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years and capital improvements and reserves approved by the Association. The total annual assessments shall be shared by all Lots and shall be in the amount as established by the Board. Each Owner shall commence paying his share of the Association assessments commencing with the day title to the Lot is conveyed by deed. Non-use of the Common Area, whether by choice of the owner, or pursuant to Association rule, shall in no way relieve the owner's responsibility for payment of any assessments set out herein.

2. Determination of Annual Assessments. Annual assessments or charges shall remain constant from January 1 through December 31 of each year, and shall be subject to the following limitations thereon:

(a) The maximum annual assessment upon each Lot may be increased or decreased (a) by the Board of Directors from time to time in an amount not to exceed twenty percent (20%) of the amount of the annual assessment in effect on the proceeding year, and (b) at a meeting of the members specially called for that purpose and of which advanced notice is given and if a majority of the members present at such meeting authorize such increase or decrease by an affirmative vote therefore; provided, however, that the annual assessment may not be decreased below an amount that is necessary to permit the Homes Association to perform its duties specified in subsection 2 of Article V.

3. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for a period not to exceed two (2) years for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, or for such other purpose as the Board may consider appropriate. No such special assessment shall be authorized except upon the affirmative vote of two-thirds (2/3) of a quorum of Members present at a meeting called in accordance with the notice procedures

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contained herein for the purpose of approving such special assessments. The members shall also vote upon and approve the procedure for the payment of such special assessment.

4. Special Assessments to Address an Emergency. If the Board determines by a two-third (2/3) affirmative vote of the membership of the Board that a special assessment is necessary to respond to an emergency:

(a) the special assessment shall become effective immediately in accordance with the terms of the vote;

(b) notice of the emergency assessment must be provided promptly to all Owners; and

(c) the Board may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

5. Due Dates; Duties of the Board. All assessments shall be payable quarterly, in advance, or on such other basis as is ordered by the Board. The Board shall fix the date of commencement and the amount of the assessment against each property, and shall prepare a roster of the property assessments, which shall be kept in the office of the Association and shall be available for inspection by any Owner. Upon the written request of an Owner or its Mortgagee, the Board shall promptly furnish such Owner or its Mortgagee with a written statement of the unpaid charges due from such Owner.

6. Effect of Nonpayment of Assessments; Personal Obligation of the Member Lien; Remedies of the Association. Each Owner of a Lot by acceptance of a deed thereto, whether or not it shall be expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association such Association assessments as are fixed by the Board and assessed to the Owners as herein provided. If an assessment is not paid on the date when due, as fixed by the Board, then such assessment, together with the balance of the assessments established by the Board pursuant to Sections 1, 2, 3 and 4 of this Article, shall become delinquent and shall, together with such interest thereon, late charges and the cost of collection thereof, including reasonable attorney's fees and court costs as hereinafter provided, thereupon become a continuing lien on the Owner's Lot, which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives and assigns.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at ten percent (10%) per annum, a late charge of \$25.00 per month shall become due, at the discretion of the Board, and the Association, acting by, and through its Board, may bring legal action against the Owner or former Owner personally obligated to pay the same, or to foreclose the lien against the property; and there shall be added to the amount of such assessment the costs of preparing the filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment, as above provided, and reasonable attorney's fees to be fixed by the Court, together with the costs of the action and aforesaid late charge.

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At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for thirty (30) or more days after the same has become due and payable, a certificate of lien for the unpaid balance of that assessment, including all future installments thereof, interest, late fees, and costs, including attorney fees, may be filed with the Register of Deeds pursuant to authorization given by the Board. For each certificate so filed, the Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$150.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Owner's Lot.

The lien provided for herein shall become effective from the time a certificate of lien was duly filed therefor, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Kansas for the release and satisfaction of mortgages on real property, or discharged by final judgment or order of a court in an action brought to discharge the lien. The Association shall have five (5) years from the time a certificate of lien was duly filed to foreclose on the lien. If the lien remains unsatisfied, a renewed certificate of lien may be filed with the Register of Deeds prior to the expiration of the five (5) year period and shall remain effective for an additional period of five (5) years as provided for herein.

Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Lot and their interests in the District, and to continue to provide service, and, accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.

7. Sales and Gifts of Lots, etc. No Owner shall convey, mortgage, pledge, hypothecate or sell a Lot unless and until all unpaid assessments shall have been paid. Such unpaid assessments, however, may be paid out of the proceeds from the sale of the Lot.

Upon the written request of any Owner or Mortgagee, the Board or its designee shall furnish a written statement of the unpaid charges due from such Owner. A reasonable charge may be made by the Board for the issuance of such statements.

The provisions of this section shall not apply to the acquisition of a property by a Mortgagee acquiring title by foreclosure or by deed in lieu of foreclosure. The lien and obligation created hereunder shall, however, be collectible as otherwise provided herein or by law, and shall be entitled to the priority set forth herein and under the law of the State of Kansas. These provisions shall, however, apply to any assessments that become due after the acquisition of title by the Mortgagee, and to any purchaser from such Mortgagee.

8. Subordination of Lien. The lien for assessments provided for in this Article shall be superior to all other liens except tax liens and mortgage liens.

ARTICLE VII

LIMITS ON EXPENDITURES

The 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 which it may have on hand

from prior years, plus any reserves it may have created and maintained for a given purpose; nor shall said Association enter into any contract whatsoever binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities, maintenance or similar services or matters to be performed for or received by the Association or its members in subsequent years.

ARTICLE VIII

COMMON AREAS

A portion of the District is designated Common Areas. All expenses of maintenance of the Common Areas shall be borne by the Association.

1. Enjoyment. Subject to Section 2 of this Article, all Owners of Lots in the District shall have the right and easement of enjoyment in and to all the Common Areas, but only for the intended use. Such right and easement shall be appurtenant to, and shall automatically pass with, the title to each Lot and shall be subject to the rights (including ownership) of any governmental authority or any utility therein or thereto.

2. Regulation and Restrictions on Use.

(a) No owner shall improve, destroy or otherwise alter any Common Area without the express written consent of the Board.

(b) The Association shall have the right to suspend any Owner's use of all or part of Common Areas for any period during which any assessment from said Owner remains unpaid.

(c) Any gates or similar security facilities that may be installed as or in a Common Area shall be constructed and operated in a manner so as to permit access at all times by emergency vehicles.

(d) The Association may dedicate or transfer all or any part of the Common Areas to any public or municipal agency, authority or utility for purposes consistent with the purpose of this Declaration and subject to such conditions as may be agreed to by the Board; provided, however, that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by two-thirds (2/3) of the Members of the Association has been recorded, agreeing to such dedication, transfer, purpose or conditions, and unless written notice of the proposed agreement and action thereunder is sent to each member, as provided for herein.

(e) The Board may grant licenses, rights-of-way and/or easements for access, or for the construction, reconstruction, maintenance and/or repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, or any other person; provided, however, that no such licenses, rights-of-way and/or easements

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shall be unreasonably and permanently inconsistent with the rights of the Owners to the use and enjoyment of the Common Areas.

(f) The Association shall have the right to make additional rules, regulations and restrictions pertain to the use of any Common Area and to fix penalties for the violation of said rules, regulations and restrictions.

ARTICLE IX **LANDSCAPING EASEMENTS**

The Association retains a right-of-way across those aforementioned segments of real property specifically delineated on the Plat of the District as Common Areas or utility easements for the purpose of allowing the Association the right to enter, construct and maintain poles, wires, anchors, pipes, sewer drains, conduits, surface drainage facilities, and sidewalks, and further to mow grass, trim shrubbery, install, maintain or operate sprinkler systems, and/or to undertake any and all necessary work associated with maintaining the appearance of the same.

ARTICLE X **ADDITIONAL EASEMENTS**

All utility easements and rights-of-way previously granted by the Developer shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of all Owners in the District and the Association as a cross easement meant for utility line or service maintenance.

The Association and its successors and assigns reserve an easement over and through all unimproved portions of each Lot in the District for the purpose of performing the duties of the Association and maintaining any Common Area. Any physical damage caused in the exercise of such easement shall be repaired by and at the expense of the party exercising the easement right.

ARTICLE XI **COVENANTS RUNNING WITH THE LAND; ENFORCEMENT**

The agreements, restrictions, and reservations herein set forth are and shall be covenants running with the land into whatsoever hands any of the property in the District shall come. No agreement, restriction, or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during his ownership of title to any Lot.

The Association, acting by and through its Board, and Owners shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of the covenants, conditions and restrictions set-forth above, in addition to any ordinary legal action for damages. The prevailing party in any such enforcement action shall be entitled to recover the expenses incurred in such action, including reasonable attorney's fees. The failure of any party to enforce any of the covenants, conditions and restrictions set forth herein at the time

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of its violation shall, in no event, be deemed to be a waiver of the right to do so thereafter, but the Board may not be arbitrary or capricious in taking enforcement action.

The Board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with law; (iii) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or (iv) it is not in the Association's best interest to pursue an enforcement action.

ARTICLE XII

NOTICES

Whenever the Board is required hereunder to submit any matter to a vote of the membership, or when a public hearing of the membership is required before the Board may act upon any matter, the following procedures shall govern:

1. Notice of the meeting shall be given to each Owner. Delivery of such notice may be made by: hand delivery to each Owner; United States mail postage paid to the mailing address of each Owner; any commercially reasonable delivery service to the mailing address of each Lot; electronic means, if the Owner has given the Association an electronic address; or any other method reasonably calculated to provide timely notice to the Owner. A signed statement by the Secretary of the Association stating the notice requirement has been met shall be presumptive proof that this section has been satisfied.
2. The notice shall set forth the date, time and place of the meeting, the subject to be considered, and the action required of the Owners.
3. Notice shall be given as prescribed not less than ten (10) days and not more than sixty (60) days prior to the meeting. If notice is mailed, the date of mailing shall count as the first day of the notice period.
4. The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.
5. The minimum time to give notice required by this subsection may be reduced or waived for a meeting called to address an emergency.
6. Before voting, Owners must be given a reasonable opportunity to comment regarding any matter affecting the common interest community or the Association.

ARTICLE XIII

ANNEXATION OR REMOVAL

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Upon the affirmative vote of two-thirds (2/3) of a quorum of Members present at a meeting called in accordance with the provisions hereof, the Association shall be authorized to file with the Register of Deeds, Johnson County, Kansas, an amendment annexing and subjecting additional lands to the terms, conditions and restrictions hereof or removing specified lands herefrom. Such annexation or removal shall be effective upon filing with the Register of Deeds of Johnson County, Kansas. Annexation or removal shall also require acknowledged consents from all owners of property being annexed or removed.

ARTICLE XIV **AMENDMENTS**

1. This Declaration may be modified and amended by written consent of the owners of two thirds of the Lots within the District, as then constituted, evidenced by a declaration duly executed and acknowledged by such owners and recorded in the office of the Register of Deeds of Johnson County, Kansas.
2. This Declaration may be terminated, and all of the land now or hereafter affected may be released from all of the terms and provisions thereof, by the owners of all the lots then subject thereto, executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the office of the Register of Deeds of Johnson County, Kansas.

ARTICLE XV **GENERAL PROVISIONS**

1. Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained or provided by the Association or paid for out of the annual assessment funds, or for injury or damage to person or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas and all recreational and other common facilities, or from any wire, pipe, drain, conduit, or the like. The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas and all recreational and other common facilities. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas and all recreational and other common facilities, or from any action taken by the Association to comply with any of the provisions of this Declaration, or with any law or ordinance or with the order or directive of any municipal or other governmental authority. Neither the Association nor any member of the ACC or the Board shall be personally liable to any person for any discretionary approval, disapproval or failure to approve any matter submitted for approval, for the adoption of any rules, regulations or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration.
1. Severability. Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment, or decree of any court, or otherwise, shall not invalidate or

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affect any of the other provisions, or any part thereof, but they shall remain in full force and effect.

2. Interpretations of Restrictions. In interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Lots. To the extent any provision of this Declaration conflicts with any provisions of any law, ordinance, resolution or permit, then, in that case, the provisions of this Declaration shall control. To the extent that this Declaration imposes any restriction or prohibition upon the use or occupancy (including the construction of any building or structure) of any lot, that is greater or more prohibitive than what is imposed by any provision of any law, ordinance, resolution or permit, then, in that case, the provisions of this Declaration shall control.

3. Waiver and Exceptions. The failure by the Association, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges to which the Subdivision or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other restriction, condition, covenant, reservation, lien or charge.

4. Titles. All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of these Restrictions nor the meaning thereof.

5. Singular and Plural, Masculine and Feminine. The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

6. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall defeat or render invalid the lien of any mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed effective as of the ____ day of _____, 20__.

Deer Creek Courts Homes Association, Inc.

Michael J. Watson, President

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VERIFICATION OF VOTE TO AMEND

I, the duly elected President of Deer Creek Courts Homes Association, Inc., hereby verify that a vote to approve and adopt the foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements and Assessments ("Declaration") was duly noticed for the ____ day of _____, 202__ and that the vote passed by a two-third (2/3) written vote of all Members, and that I, as President, was duly authorized to execute and record the foregoing instrument with the Register of Deeds of Johnson County, Kansas as the Declaration governing all Lots in the subdivision.

Michael J. Watson, President
Deer Creek Courts Homes Association, Inc.

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ACKNOWLEDGMENT

STATE OF KANSAS)
)ss
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the County and State set forth above, personally appeared Michael J. Watson, known to be the President of Deer Creek Courts Homes Association, Inc., personally known to be the same person who executed as such officer, the above and foregoing Amended and Restated Declaration of Covenants, Conditions, Restrictions, Easements and Assessments on behalf of said corporation, and such person duly acknowledged execution of the same to be the free act and deed of said corporation.

In WITNESS WHEREOF, I have hereunto set my hand and notarial seal the day and year least written above.

Notary Public

My Appointment Expires:

EXHIBIT A

All of Lots 1 through 37, DEER CREEK COURTS, a Subdivision of land in Johnson County, Overland Park, Kansas;

All of Lots 38 through ~~42~~, DEER CREEK COURTS, SECOND PLAT, a Subdivision in the City of Overland Park, Johnson County, Kansas; and

All of Lot ~~43~~, DEER CREEK COURTS, THIRD PLAT, a Subdivision in the City of Overland Park, Johnson County, Kansas.

All of Lot 44, DEER CREEK COURTS, FOURTH PLAT, a Subdivision in the City of Overland Park, Johnson County, Kansas.

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