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Security Land Title Company

STATE OF KANSAS  
COUNTY OF JOHNSON  
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SARA F. ULLMAN  
REGISTER OF DEEDS

**HEATHERWOOD  
DECLARATION OF RESTRICTIONS**

THIS DECLARATION is made as of the 20 day of October, 1997, by The Haven Group L.L.C., a Kansas limited liability company.

WITNESSETH:

WHEREAS, The Haven Group L.L.C. has executed and filed with the Register of Deeds of Johnson County, Kansas two plats of the subdivision known as "HEATHERWOOD"; and

? WHEREAS, part of the lots in such plats will be part of the residential duplex area to be commonly known as "Heatherwood", to-wit:

All of Lots 1, 2, 3, and 18 through 25, HEATHERWOOD, a subdivision of land in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof;

All of Lots 35 through 39 and 62 through 94, HEATHERWOOD, SECOND PLAT, a subdivision of land in City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

WHEREAS, The Haven Group L.L.C., as the present owner and developer of the above-described lots, desires to place certain restrictions on such lots to preserve and enhance the value, desirability and attractiveness of the development and improvements constructed thereon and to keep the use thereof consistent with the intent of the developer, and all of said restrictions shall be for the use and benefit of The Haven Group L.L.C. and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises contained herein, The Haven Group L.L.C., for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the above-described lots shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth.

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

(a) "Lot" means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has

been, is being, or will be erected, then such adjacent property under common ownership shall be deemed to constitute only one "Lot".

(b) "Duplex Unit" means collectively (i) one of the two separate residential units contained in a duplex that will be, is being or has been constructed on any Lot and (ii) the portion of the Lot that is allocated to such unit. Should a single family, unattached residential unit be constructed on a Lot, such residential unit shall be deemed a "Duplex Unit" for purposes of this Declaration.

(c) "Subdivision" means all of the above-described lots to be part of Heatherwood (excluding Villas of Heatherwood and Ashbrook areas), and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(d) "Developer" means The Haven Group L.L.C., a Kansas limited liability company, and its successors and assigns.

(e) "Owner" means the record owner(s) of title to any Duplex Unit, including the Developer, and for purposes for all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees.

(f) "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, in or to the Subdivision, (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 Subdivision, and (iii) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the owners within the Subdivision, whether or not any "Common Area" is located on any Lot.

(g) "Homes Association" means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision and the Villas of Heatherwood subdivision.

(h) "Exterior Structure" means any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse, outbuilding, fence, patio wall, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, pond, basketball goal, flag pole, swingset, trampoline, sand box, playhouse, treehouse or

other recreational or play structure, and all exterior sculptures, statuary, fountains, and similar yard decor.

(i) "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 Subdivision (as then composed or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in Developer's absolute discretion at any time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

(j) "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).

(k) "Board" means the Board of Directors of the Homes Association.

(l) "Architectural Committee" means: (i) prior to the Turnover Date, the Developer (or its designees from time to time); and (ii) on and after the Turnover Date, a committee comprised of at least four members of the Homes Association and including an equal number of Owners from each of the Subdivision and the Villas of Heatherwood subdivision, all of whom shall be appointed by and serve at the pleasure of the Board (subject to the term limitations and other provisions of Section 14 below).

(m) "City" means the City of Overland Park, Kansas.

(n) "Turnover Date" means the earlier of: (i) the date as of which 90% of all of the Duplex Units in the Subdivision (as then composed or contemplated by the Developer) have been sold by the Developer and the duplex residences have been constructed thereon, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

2. Use of Land. Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied for other than private residential purposes. No structure containing three or more living units may be erected on any Lot. No trailer, outbuilding or Exterior Structure shall at any time be used for human habitation, temporarily or permanently; nor shall any residence of a temporary character be erected, moved onto or maintained upon any of the Lots or any Common Areas or used for human

habitation; provided, however, that nothing herein shall prevent the Developer or others (including, without limitation, builders and real estate sales agencies) authorized by the Developer from using trailers or temporary buildings or structures or any residence or clubhouse for model, office, sales, rental or storage purposes during the development and build out of the Subdivision.

3. Building Material Requirements.

(a) Exterior walls of all residences and all appurtenances thereto shall be of stucco, stucco board, brick, stone, wood shingles, batt siding, wood paneling, masonite or wood siding, plate glass, glass blocks, or any combination thereof. All windows shall be constructed of glass, wood, metal or vinyl 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, metal or vinyl clad and wood laminate, colored metal (other than silver) and glass, or any combination thereof. Roofs shall be covered with high quality asphalt or composition shingles or other materials, all of the specific types and colors approved by the Developer in writing. Notwithstanding the foregoing provisions of this Section 3 requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the area, as determined by the Developer in its absolute discretion, shall be acceptable upon written approval by the Developer in its absolute discretion.

(b) All exteriors, except roofs and natural side walls, shall be covered with a workmanlike finish of two coats of high quality paint or stain. No residence or Exterior Structure shall 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 in excess of 12 inches above final grade shall be painted the same color as the residence or covered with siding compatible with the structure.

(c) No air conditioning apparatus or unsightly projection shall be attached or affixed to the front of any residence.

(d) No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue, and all fireplace flues shall be capped with a black or color-conforming metal rain cap.

(e) Except as otherwise permitted by the Developer in writing, all residences shall have a house number plate in the style(s) approved by the Developer, which plate shall be located over the garage doors or adjacent to the side trim of the garage doors.

(f) All driveways and sidewalks shall be concrete, patterned concrete, bomanite, interlocking pavers, brick or other permanent stone finishes. Crushed gravel, asphalt and natural driveways and sidewalks are prohibited.

(g) All Duplex Units shall have at least a two-car garage. No car ports are permitted.

4. Minimum Floor Area. No Duplex Unit shall be constructed upon any Lot unless it has a total finished floor area of at least 1,150 square feet. Finished floor area shall exclude any finished attics, garages, basements and similar habitable areas. The Developer, in its absolute discretion, may allow variances from the minimum square footage requirement for specified Lots.

5. Approval of Plans: Post-Construction Changes: Grading.

(a) Notwithstanding compliance with the provisions of Sections 3 and 4 above, ~~no residence or Exterior Structure may be erected upon or moved onto any~~ Lot unless and until the building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans, and exterior color scheme have been submitted to and approved in writing by the Developer or, in the case of Exterior Structures to the extent provided in Section 8 below, the Architectural Committee. No change or alteration in such building plans, specifications, exterior materials, location, elevations, lot grading plans, general landscaping plans or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the Developer or the Architectural Committee, as the case may be. All building plans and plot plans shall be designed to minimize the removal of existing trees and shall designate those trees to be removed.

(b) Following the completion of construction of any residence or Exterior Structure, no significant landscaping change, significant exterior color change or exterior addition or alteration shall be made thereto unless and until the change, addition or alteration has been submitted to and approved in writing by the Architectural Committee. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the Architectural Committee.

(c) All final grading of each Lot shall be in accordance with the master grading plan approved by the City, any related grading plan furnished by the Developer for the development phase containing the Lot and any specific site grading plan for the Lot approved by the Developer. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. Water from sump pumps shall be drained away from adjacent residences

(actual and future). No changes in the final grading of any Lot shall be made without the prior written approval of the Approving Party and, if necessary, the City. The Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master grading plan or any approved lot grading plan or for the Developer not requiring a lot grading plan and compliance therewith. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots that the Developer may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.

6. Set Backs. No residence, or any part thereof (exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections), or Exterior Structure, or any part thereof, shall be nearer the street line than the building set back lines shown on the recorded plat for such Lot; provided, however, that the Approving Party shall have the right to decrease, from time to time and in its absolute discretion, the set back lines for a specific Lot, to the extent they are greater than the minimum set backs required by the City, by filing an appropriate instrument in writing in the office of the Register of Deeds of Johnson County, Kansas.

7. Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Developer in writing, construction of the residence on a Lot shall be commenced within nine months following the date of delivery of a deed from the Developer to the purchaser of such Lot and shall be completed within fifteen months after such commencement. In the event such construction is not commenced within such nine month period (or extension thereof, if any), the Developer shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Lot from such purchaser at its original sale price. If such repurchase right is exercised by the Developer, the Owner of the Lot in violation of this construction commencement provision shall not be entitled to reimbursement for taxes, interest or other expenses paid or incurred by or for such Owner.

8. Exterior Structures.

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

occupancy as part of the residential construction plans approved by the Developer and (B) has been built in accordance with such approved plans.

(b)

(i) Lots may have only wood or wrought iron (or similar) fences or privacy screens in the specific styles and colors approved by the Developer. All fences, boundary walls and privacy screens shall be ornamental and shall not disfigure the property or the neighborhood. All fences and privacy screens shall be constructed with the finished side out. No chain link or similar fence shall be permitted. Unless and until otherwise specifically approved in writing by the Approving Party, (A) no fence, boundary wall or privacy screen shall exceed five feet in height, (B) no fence, boundary wall or privacy screen shall be constructed or maintained on any Lot nearer to the street than the rear corners (as defined by the Approving Party) of the residence, (C) no fence shall be constructed or maintained on any Lot more than one foot from the property line of the ~~Lot or Duplex Unit, except to the extent necessary for such fence to abut the~~ residence, (D) all fences must be joined to or abutting any previously existing fences on adjacent Lots or Duplex Units, (E) all fences shall be stair-stepped to follow the grade of the Lot, and (F) no wood fence shall be painted.

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(ii) All basketball goals shall be permanently installed, free standing and not attached to the residence unless the Architectural Committee determines that there are compelling reasons for the basketball goal to be attached to the residence. All backboards shall be transparent or painted white and all poles shall be a neutral color. There shall be only one basketball goal per Duplex Unit. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.

(iii) Except where specifically authorized by the Developer or the Architectural Committee in writing, all recreational or play structures (other than basketball goals) shall be located behind the back building line of the residence.

(iv) No aboveground type swimming pools shall be permitted. All pools shall be fenced and all hot tubs shall be fenced or otherwise adequately screened, all in accordance with the other provisions of the Declaration. All pools and hot tubs shall be kept clean and maintained in operable condition at all times.

(v) The following Exterior Structures shall be prohibited: animal runs, trampolines, tennis courts, paddle tennis courts, tree houses, detached greenhouses and other detached outbuildings.

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(vi) All outside dog houses shall be located in the back yard, shall be painted or stained the same color of the residence, and shall have roofs that are compatible with the residence.

(vii) No Exterior Structure that is prohibited under Section 9 below shall be permitted under this Section 8.

(c) No fence, boundary wall or other Exterior Structure installed by or for the Approving Party anywhere in the Subdivision may be removed or altered by any Owner or other person without the prior written consent of the Approving Party.

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

~~(a) Except as otherwise provided in Section 2 above, no residence or Exterior Structure, or any portion thereof, shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with the applicable ordinances of the City.~~

(b) No noxious or offensive activity shall be carried on with respect to any Duplex Unit; nor shall any grass clippings, trash, ashes or other refuse be thrown, placed or dumped upon any Duplex Unit or Common Area; nor shall anything be done which may be or become an annoyance or a nuisance to the Subdivision, or any part thereof. Each Owner shall properly maintain his Duplex Unit 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) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(d) Overnight parking of motor vehicles of any type or character in public streets, Common Areas or vacant lots is prohibited. Motor vehicles shall be parked overnight in garages or on paved driveways only.

(e) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed.

(f) Recreational motor vehicles of any type or character are prohibited except:

(i) Storing in an enclosed garage;

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Trucks  
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etc.



(ii) Temporary parking for the purpose of loading and unloading (maximum of one consecutive night and one night every 14 days); or

(iii) With prior written approval of the Approving Party.

(g) Except as provided in subsection (f) above, no vehicle (other than an operable passenger automobile, passenger van or small truck), truck, bus, boat, trailer, camper or similar apparatus shall be left or stored over night on any Lot, except in an enclosed garage.

(h) No television, radio, citizens' band, short wave or other antenna, satellite dish (other than as provided below), solar panel, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or Exterior Structure or erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be ~~unenforceable because it violates the First Amendment or any other provision of~~ the United States Constitution, the Architectural Committee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Duplex Units. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes (maximum 20 inches in diameter) may be installed, with the prior written consent of the Approving Party, so as not to be readily visible from the street. The Approving Party shall have the right to establish rules and regulations binding upon all of the Duplex Units and specific requirements for each Duplex Unit, regarding the location, size, landscaping and other aesthetic aspects of such small satellite dishes so as to control the impact thereof on the Subdivision, and all parts thereof.

(i) ~~No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard.~~

(j) No lights or other illumination (other than street lights) shall be higher than the residence. Exterior holiday lights shall be permitted only between November 15 and January 31. Except for such holiday lights, all exterior lighting shall be white and not colored. All exterior landscape lighting must be approved in advance by the Approving Party.

(k) No garage sales, sample sales or similar activities shall be held within the Subdivision without the prior written consent of the Homes Association.

(l) No speaker, horn, whistle, siren, bell or other sound device, shall be located, installed or maintained upon the exterior of any residence or in any yard,

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

(m) All residential service utilities shall be underground, except with the approval of the Developer.

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

*Duplex only?*  
(o) No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any Duplex Unit. Storage shall be permitted under a deck provided such area is screened as otherwise authorized herein.

(p) No outside or underground fuel storage tanks of any kind shall be permitted.

(q) No driveway shall be constructed in a manner as to permit access to a street across a rear lot line.

(r) Except for signs erected by or for the Developer or its approved realtor for the Subdivision, no sign, advertisement or billboard may be erected or maintained on any Duplex Unit except that:

(i) One sign not more than three feet high or three feet wide, not to exceed a total of six square feet, may be maintained offering the residence for sale. For newly constructed homes offered for sale, only a realtor sign (which may include a rider identifying the builder), and not also a separate sign for the builder, may be used if a realtor is involved.

(ii) One garage sale sign not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted on the Duplex Unit when the sale is being held, provided such signs are erected in accordance with City code and are removed within 24 hours after the close of the sale.

(iii) One political sign per candidate or issue not more than three feet high or three feet wide, not to exceed a total of six square feet, is permitted for up to three weeks before the election but must be removed within 24 hours after the election.

*Duplex*  
No signs offering a Duplex Unit for rent or lease shall be allowed in the Subdivision.

(s) No sign shall be placed or maintained in any Common Area without the approval of the Approving Party.

(t) No trash, refuse, or garbage can or receptacle shall be placed on any Duplex Unit outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection and except for grass bags placed in the back or side yard pending regularly scheduled trash collection.

(u) Garage doors shall remain closed at all times except when necessary.

*Duplex*  
10. Animals. No animals of any kind shall be raised, bred, kept or maintained on any Duplex Unit except that dogs, cats and other common household pets may be raised, bred, kept or maintained so long as (a) they are not raised, bred, kept or maintained for commercial purposes, (b) they do not constitute a nuisance and (c) the City ordinances and other applicable laws are satisfied. All pets shall be confined to the Duplex Unit of the Owner except when on a leash controlled by a responsible person. Owners shall ~~immediately clean up after their pets on all streets, Common Areas and Duplex Units~~ owned by others.

11. Lawns, Landscaping and Gardens. Prior to occupancy, all lawns, including all areas between each residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that the Owner of a Duplex Unit may leave or subsequently create a portion of the Duplex Unit as a natural area with the express written permission of the Approving Party. No lawn shall be planted with zoysia or buffalo grass. Prior to occupancy, the Owner thereof shall landscape the Duplex Unit to the same standards as that generally prevailing throughout the Subdivision [which shall include a minimum expenditure of \$500.00 per Duplex Unit on foundation plantings in the front yard plus at least one hardwood tree of one and one-half inch or more caliper per Duplex Unit in the front yard (in addition to any trees planted by the Developer)] and in accordance with the plans approved by the Developer.

To the extent any of the foregoing items are not completed prior to occupancy, the Owner shall escrow funds, in an amount and manner determined by the Developer, to assure such installation when weather permits.

All vegetable gardens shall be located behind the rear corners of the residence and at least five feet away from the boundary of the Lot. No vegetable garden(s) shall exceed 100 square feet in size on any Duplex Unit except with the prior written consent of the Approving Party.

The lawn of each Duplex Unit shall be kept in good condition at all times and uniformly mowed and clipped with a length of grass not to exceed four inches.

The Developer shall have the right (but not the obligation) to install one or more trees on each Lot. The type of tree(s) and location shall be selected by the Developer in its absolute discretion. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Duplex Unit (including any trees planted by or for the Developer, but excluding those in a Common Area maintained by the Homes Association).

12. Easements for Public Utilities: Drainage: Maintenance. The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on any recorded plat of the Subdivision or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners and the Homes Association as a cross-easement for utility line or service maintenance.

The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through all unimproved portions of each Duplex Unit in the Subdivision for the purpose of performing the duties of the Homes Association and maintaining any Common Area.

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

13. Common Areas.

(a) The Developer and its successors, assigns, and grantees, as Owners, and the Homes Association shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended and permitted use of such Common Areas. Such right and easement in favor of the Owners shall be appurtenant to, and shall automatically pass with, the title to each Duplex Unit. All such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.

(b) Any ownership by the Homes Association of any Common Area and the right and easement of enjoyment of the Owners in the Subdivision as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, pipeline, maintenance, electric, telephone, television and other utility easements over, under, upon and through such Common Area, as provided in Section 12 above.

(c) No Owner shall improve, destroy or otherwise alter any Common Area without the express written consent of the Approving Party.

(d) Owners of Duplex Units adjacent or nearby the Common Areas shall prevent erosion and pollutant discharges and runoff onto the Common Areas.

(e) Subject to the foregoing, the Developer and the Homes Association shall have the right from time to time to make, alter, revoke and enforce additional rules, regulations and restrictions pertaining to the use of any Common Area.

14. Architectural Committee.

(a) No more than two members of the Board shall serve on the Architectural Committee at any time. The positions on the Architectural Committee may be divided by the Board into two classes with staggered two-year terms. No member of the Architectural Committee shall serve in such position for more than 48 months during any five year period. The foregoing provisions of this subsection (a) shall not apply until the Turnover Date. Until such date, the Developer or its designees shall be the Architectural Committee.

(b) The Architectural Committee shall meet as necessary to consider applications with respect to any Exterior Structures that require the approval of the Architectural Committee as provided in Section 8 above and to consider any other matters within the authority of the Architectural Committee as provided in this Declaration. A majority of the members of the Architectural Committee shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the Architectural Committee.

(c) At each meeting, the Architectural Committee shall consider and act upon written and complete applications that have been submitted to it for approval in accordance with this Declaration. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the individual members of the Architectural Committee, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. All decisions of the Architectural Committee shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The Architectural Committee may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions. Any written application complete with appropriate drawings and other information that is not acted upon by the Architectural Committee within 35 days after the date on which it is filed shall be deemed to have been approved.

(d) After the Turnover Date, any applicant or other person who is dissatisfied with a decision of the Architectural Committee shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven days after the date the Architectural Committee renders its written decision. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board, in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. Any decision rendered by the Board on appeal of a decision of the Architectural Committee shall be final and conclusively binding on all parties and shall be deemed to be the decision of the Architectural Committee for all purposes under this Declaration. The Board from time to time may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Architectural Committee, including, without limitation, requiring payment of a reasonable fee by the appealing party.

15. No Liability for Approval or Disapproval. Neither the Developer, nor the Homes Association, nor any member of the Architectural Committee or the Board shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions or guidelines.

16. Covenants Running with Land: Enforcement. The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither the Developer, the Homes Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. By accepting a deed to any of the Duplex Units or Lots, each future grantee of any of the Duplex Units and Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the Duplex Unit or Lot owned by such Owner. No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during his ownership; provided, however, that (i) the immediate grantee from the builder of the residence on a Duplex Unit shall be personally responsible for breaches committed during such builder's ownership of such Duplex Unit and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Duplex Unit to the extent notice of such breach was filed of record, as provided in the third paragraph of this Section 16, prior to the transfer of ownership.

The Developer, the Homes Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions, reservations and other provisions herein set forth, in addition to any action at law for damages. To the extent permitted by law, if the Developer or the Homes Association shall be successful in obtaining a judgment or consent decree in any such court action, the Developer and/or Homes Association shall be entitled to receive from the breaching party as part of the judgment or decree the legal fees and expenses incurred by the Developer and/or Homes Association with respect to such action.

Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Duplex Unit, the Developer or the Homes Association may file with the office of the Register of Deeds of Johnson County, Kansas a certificate setting forth public notice of the nature of the breach and the Duplex Unit involved.

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

No waiver of any violation shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have; provided, however, that a duly authorized, executed and delivered waiver by the Homes Association, acting upon a decision of the Board, respecting a specific violation shall constitute and be deemed as a waiver of such violation by all other persons and entities (other than the Developer).

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

18. Release or Modification of Restrictions.

(a) The provisions of this Declaration shall remain in full force and effect until December 31, 2027, and shall automatically be continued thereafter for

successive periods of five years each; provided, however, that the Owners of at least a majority of the Duplex Units within the Subdivision as then constituted may release the Subdivision, from all or part of such provisions as of December 31, 2027, or at the expiration of any extension period, by executing (in one or more counterparts), acknowledging and recording an appropriate agreement in writing for such purpose, at least one year prior to December 31, 2027, or to a subsequent expiration date, whichever is applicable. The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (i) the Owners of at least two thirds (2/3) of the Lots within the Subdivision as then constituted and (ii) if prior to the recording of the Certificate of Substantial Completion, the Developer, or if after the recording of the Certificate of Substantial Completion, the Homes Association.

(b) Anything set forth in this Section 18 to the contrary notwithstanding, the Developer shall have the absolute, unilateral right, power and authority to ~~modify, revise, amend, change or add to any of the terms and provisions of this Declaration, as from time to time amended or supplemented,~~ by executing, acknowledging and recording an appropriate instrument in writing for such purpose, if (i) 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 Subdivision or any part of the Subdivision or any Duplex Unit in the Subdivision, for federally-approved mortgage financing purposes under applicable Veteran's Administration or Federal Housing Administration or similar programs, laws and regulations, or (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision.

(c) If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as of the date of such execution.

19. Extension of Subdivision. The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any street, park or right-of-way) by executing, acknowledging and recording an appropriate written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in its discretion.



20. Waiver of Claims. To the extent the Subdivision is the subject of a Interim Unilateral Development Agreement between the Developer and the City, the Developer, for itself and all future grantees of any of the Duplex Units or Lots, and their successors and assigns, hereby:

(a) waives any and all claims or causes of action against the City or any other party, for or relating to escrows paid (including interest thereon) to the City, special assessments levied against any portion of the Duplex Units or Lots, or thoroughfare right-of-way dedicated or condemned for any adjacent road from any plat containing the Duplex Units or Lots or otherwise condemned for any adjacent road, in any such case for thoroughfare construction with respect to any of the Duplex Units or Lots or the platting thereof; and

(b) waives any right to institute any proceeding against the City or any other party for any claim or cause of action for damages, injunctive relief, refund, expenses or injury to persons or property arising out of the payment of money or the dedication of any right-of-way pursuant to any Interim Unilateral Development Agreement between the Developer (or any prior owner of the land now constituting the Lots) and the City or arising out of compliance by any party with any of the terms and conditions of such Interim Unilateral Development Agreement.


21. Party Walls and Related Matters.

(a) The boundary line between the two attached Duplex Units on a Lot shall be deemed to be the center line of the wall dividing the two Duplex Units (the "Wall"), notwithstanding the fact that the boundary line shown upon any plat of survey creating two parcels out of the Lot may not be located precisely upon said center line of the Wall. The Owner of each such parcel from time to time shall have the full rights of ownership, use and occupancy of the Dwelling Unit located primarily upon such parcel and the Owner of one Duplex Unit shall not have any right, title or interest in any part of the Duplex Unit located primarily upon the other parcel.

(b) Subject to the provisions of subsections (e) and (f) below, the Owners of the attached Dwelling Units from time to time shall, at their sole cost and expense, make all repairs and perform all maintenance required upon the surface and non-structural elements of the portion of the Wall which serves as an interior wall of the living unit owned by such Owner; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner's tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (f) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance.

(c) Subject to the provisions of subsections (e) and (f) below, the Owners of the attached Dwelling Units from time to time shall make or cause to be made all repairs and maintenance to all utilities to the extent common to the Lot, including, but not limited to, sewer, water and electrical utilities, and to the structural elements of the Wall, with the cost of such repairs or maintenance to be paid one-half (1/2) by the Owner of each Dwelling Unit; provided, however, that if and to the extent that any such repairs or maintenance are necessitated by reason of the negligence or wrongful act of one Owner or such Owner's tenants, agents, employees, guests or invitees, then, subject to the provisions of subsection (f) below, such repairs or maintenance shall be made and performed at the sole cost and expense of the Owner whose (or whose tenant's, agent's, employee's, guest's or invitee's) negligence or wrongful act necessitated such repairs or maintenance.

(d) Any and all repairs and maintenance which either Owner or both Owners jointly shall be required to perform hereunder or shall elect to perform shall be done in a good and workmanlike manner and in full compliance with all laws, ordinances, statutes, rules and regulations of any federal, state, county or local government or governmental agency or authority. Any such repairs and maintenance, once commenced, shall thereafter be diligently prosecuted to completion. Each Owner shall have a reciprocal easement across the other Owner's Duplex Unit to allow reasonable access for the purpose of making inspections and performing any maintenance or repairs. Such easement rights shall be exercised in such a manner as to avoid, to the extent reasonably practicable, unnecessary interference with the use and occupancy of the other Owner's Duplex Unit.



(e) Each Owner shall keep and maintain insurance coverage with respect to the portion of the building owned by such Owner and with respect to the Wall, insuring the improvements against damage or destruction by fire, lightning, wind, hail, explosion, vandalism and other hazards generally covered in the area under standard extended coverage homeowner's insurance, in an amount equal to not less than full replacement cost. The Homes Association shall be named as an additional insured on such insurance coverage and shall be provided, upon request, with a certificate of insurance evidencing such coverage. Such insurance shall contain provisions whereby the insurer consents to the mutual waiver of liability contained in subsection (f) below. In the event of any fire or other casualty with respect to the building or any portion thereof, the building or such portion shall be repaired or restored by the Owners according to a uniform architectural plan and finish approved by the Approving Party. The cost of such repair and restoration shall be apportioned to each Owner according to the actual cost of repair and restoration of such Owner's Duplex Unit.

(f) Notwithstanding anything to the contrary herein, each Owner of attached Duplex Units hereby releases the other Owner, its tenants, agents, employees, guests or invitees from all liability for damage due to any act or neglect of the other Owner, its tenants, agents, employees, guests or invitees (except as

herein provided) occurring to the building which is or might be incident to or the result of a fire or any other casualty which is or would be covered by the casualty insurance policy described in subsection (e) above or which is covered by any other insurance actually maintained by the Owner or its tenants or other occupants; provided, however, that the releases herein contained shall not apply to any loss or damage occasioned by the willful act or omission of either Owner.

(g) Neither Owner shall have the right, except with the prior written consent of the other Owner, to (a) make any alterations or additions to the Wall or any part thereof, except non-structural interior alterations made within the living unit in the building, or (b) take any action which will adversely affect the structural integrity or sound transmission prevention qualities of the Wall. To the extent any Owner shall make any alterations or additions to the Wall, (i) such Owner shall, at its sole cost and expense, keep and maintain such alterations or additions in good condition and repair, and (ii) in the event of any fire or other casualty, the restoration and repair of such alterations or additions shall be at the sole cost and expense of such Owner.

(h) The exterior of the building of attached Duplex Units shall be decorated with a uniform color which shall be agreed upon by the two Owners and approved by the Approving Party and the expense of maintaining, repairing and replacing the roof, subject to the provisions of subsection (f) above, shall be equally shared by the two Owners. Should there be a disagreement as to the necessity, time, manner or extent of maintaining, repairing or replacing the roof or as to the exterior color of the building, the Board shall resolve the dispute and if either Owner shall fail or refuse to pay its share of such expense, the other Owner may have the work done and be entitled to a lien against the other Owner's Duplex Unit as provided for in subsection (i) below.

(i) Should an Owner fail or refuse to pay any costs or expenses as provided in this Section, the non-defaulting Owner shall be entitled to a lien on the Duplex Unit of the Owner so failing or refusing to pay to the extent of such costs or expenses. Payment of such costs or expenses may be enforced as a mechanic's lien on such Duplex Unit through proceedings in any court in Johnson County, Kansas, having jurisdiction of suits for the enforcement of such liens. Such non-defaulting Owner may also file a certificate of nonpayment of such costs and expenses against the defaulting Owner's Duplex Unit in the Office of the Register of Deeds of Johnson County, Kansas. Such liens shall continue for a period of five years from the date of nonpayment of the costs or expenses, unless suit shall have been instituted for collection of the costs or expenses, in which case the lien shall continue until payment in full or termination of the suit against the defaulting party.

(j) To the extent not inconsistent with the provisions of this Article, the laws of the State of Kansas regarding party walls shall be applicable with respect to each Wall.

22. 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 affect any of the other provisions or parts.

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

**THE DEVELOPER:**

THE HAVEN GROUP L.L.C.

By: [Signature]  
James R. Lambie, Member

By: [Signature]  
John R. Geer, Member

By: [Signature]  
Donald C. Geer, Member

STATE OF KANSAS )  
 ) ss.  
COUNTY OF JOHNSON )

This instrument was acknowledged before me on October 20, 1997 by James R. Lambie, John R. Geer, and Donald C. Geer, as members and on behalf of The Haven Group L.L.C., a Kansas limited liability company.

[Signature]  
Notary Public in and for  
Said County and State

Print Name: Deborah Hoschouer

My Commission Expires:  
1-17-2000

[SEAL]

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SNWOO 108218

DEBORAH HOSCHOUER  
Notary Public - State of Kansas  
My Appt. Expires 1-17-2000