

WOODS OF MAHAFFIE
DECLARATION OF RESTRICTIONS

THIS DECLARATION is made as of the 6 of May, 2004, by Mackey Homes, Inc., a Kansas corporation ("Developer").

WITNESSETH:

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

Lots 1 through 34 and Tracts A, B and¹ C, WOODS OF
MAHAFFIE, a subdivision in the City of Olathe, Johnson County,
Kansas.

WHEREAS, Developer, as the present owner and developer of the above-described property, 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 Developer and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that 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 each of the lots within 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) "Subdivision" means all of the above-described lots in Woods of Mahaffie, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(c) "Developer" means Mackey Homes, Inc., a Kansas corporation, and its successors and assigns.

(d) "Owner" means the record owner(s) of title to any Lot, 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.

(e) "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 or the Homes Association 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, (iii) all Green Areas, and (iv) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the owners within the Subdivision, whether or not any "Common Area" is located on any Lot.

(f) "Landscape Easements" means all areas (if any) shown on any plat of the Subdivision as being an "L/E" area. Each Landscape Easement shall constitute an easement in favor of the Developer and the Homes Association for the purpose of erecting, constructing, planting, maintaining and replacing fences, trees, shrubs, flowers and irrigation systems for the use, benefit and enjoyment of all owners in the area. The rights of the Developer in such easements shall automatically terminate upon filing of the Certificate of Substantial Completion.

(g) "Green Areas" means Tracts A, B and C, Woods of Mahaffie (as they may be subsequently replatted and/or reconfigured), all walking trails within the Subdivision not owned or maintained by the City, and all similar areas that may be platted in the Subdivision as a tract and not as a residential lot.

(h) "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 other subdivisions in the area.

(i) "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, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, pond, basketball goal, flag pole, jungle gym, swingset, trampoline, sand box, playhouse, treehouse, batting cage, or other recreational or play structure, and all exterior sculptures, statuary, fountains, and similar yard decor.

(j) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all of the Lots in the Subdivision (as then contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in Developer's absolute discretion at any 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.

(k) "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 Board (or with respect to Exterior Structures and other matters assigned to it, the Architectural Committee).

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

(m) "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 three members of the Homes Association residing in the 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 13 below).

(n) "City" means the City of Olathe, Kansas.

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

(p) "Recording Office" means the Office of the Register of Deeds of Johnson County, Kansas.

2. Use of Land. Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied for other than single family, private residential purposes. 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 brokerage companies) authorized by the Developer from using trailers or temporary buildings or structures or any residence or clubhouse for model, office, sales or storage purposes during the development and build out of the Subdivision and other subdivisions in the area.

3. Building Material Requirements. All exterior construction materials shall be of the specific types and colors approved by the Approving Party.

4. Minimum Floor Area.

(a) No residence shall be constructed upon any Lot unless it has a total finished floor area of at least 2,350 square feet (including any area finished upon original occupancy, but excluding garages or unfinished attics and unfinished basements).

(b) The Developer, in its absolute discretion, may allow variances from the minimum square footage requirement.

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, plot plan, lot grading plan, general landscaping plan, and exterior color scheme (all as and when required by the Developer for each particular stage of construction) have been submitted to and approved in writing by the Developer or, in the case of Exterior Structures to the extent provided in Section 6 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.

(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) 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 or compliance therewith or for the quality or composition of any soil or subsurface material. The Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots that the Developer or any engineer or other party 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. 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 (all exterior color scheme changes subsequent to initial occupancy shall also require Developer or Architectural Committee approval, as the case may be) 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. Compliance with the specific requirements or restrictions set forth in subsection (b) below or elsewhere in this Declaration shall not automatically entitle an Owner to install or maintain any specific Exterior Structures, and the Approving Party, in its discretion, shall always have the right to additionally regulate, prohibit, condition or otherwise restrict any Exterior Structure notwithstanding such otherwise compliance.

(b)

(i) Only fences or privacy screens in the specific styles and colors approved by the Developer shall be permitted on the Lots. All fences, boundary walls and privacy screens shall be ornamental and shall not disfigure the property or the neighborhood or interfere with drainage. All fences and privacy screens shall be constructed with the finished side out. No chain link, wire or similar fence shall be permitted. No fence may be installed in any Landscape Easement. Unless and until otherwise specifically approved in writing by the Approving Party, the following additional requirements shall apply with respect to the Lots: (A) no fence, boundary wall or privacy screen shall be constructed or maintained on any Lot nearer to the front street than the rear corners (as determined by the Approving Party) of the residence; (B) no fence shall be constructed or maintained on any Lot more than one foot from the property line of the Lot, except to the extent necessary for such fence to abut the residence and except for fences around swimming pools, hot tubs and patio areas; (C) all fences (except for fences around swimming pools, hot tubs and patio areas) must be joined to or abutting any previously existing fences on adjacent Lots; and (D) all perimeter fences shall be stair-stepped to follow the grade of the Lot.

(ii) All basketball goals shall be permanently installed, free standing and not attached to the residence. All backboards shall be transparent or painted white and all poles shall be a neutral color or black. There shall be only one basketball goal per Lot. 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) All recreational or play structures must be approved in advance by the Approving Party and (if allowed) shall be made of materials approved in writing by the Approving Party and (other than basketball goals) shall be located behind the rear corners (as determined by the Approving Party) of the residence.

(iv) No aboveground type swimming pools shall be permitted. All swimming 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, portable basketball goals, tennis courts, paddle tennis courts, tree houses, batting cages, detached greenhouses and other detached outbuildings.

(vi) All outside dog houses shall be located in the back yard near the residence, shall be painted or stained (where appropriate) 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 7 below shall be permitted under this Section 6.

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

7. 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 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 a nuisance to the Subdivision, or any part thereof. Each Owner shall properly maintain his Lot in a neat, clean and orderly fashion. Each residence and Exterior Structure on a Lot shall be kept and maintained by the Owner in good condition and repair at all times. Each residence shall be repainted by the Owner every five years or less, as needed. Any exterior color change must be approved in advance in accordance with Section 5(b).

(c) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(d) Overnight parking of motor vehicles, trailers or similar apparatus 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. Except as provided in subsection (f) below, no vehicle (other than an operable passenger automobile, passenger van or small truck), commercial truck, bus, boat, trailer, camper, mobile home, or similar apparatus shall be left or stored over night on any Lot, except in an enclosed garage.



(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;

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

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

(g) 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 unenforceable because it violates a statute or the First Amendment or any other provision of the United States Constitution, the Approving Party 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 Lots. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes (maximum 39 inches in diameter) may be installed, with the prior written consent and in accordance with the requirements of the Approving Party, so as not to be readily visible from the street and to render the installation as inoffensive as possible to other Owners.

(h) 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.

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

(j) 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.

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

(l) In the event of vandalism, fire, windstorm or other damage, no residence or Exterior Structure shall be permitted by the Owner to remain in damaged condition for longer than three months (except with the specific written consent of the Approving Party).



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

(n) No fuel storage tanks of any kind shall be permitted (other than normal propane tanks for outdoor grills).

(o) Except for signs erected by or for the Developer or its approved real estate brokerage company for the Subdivision, no sign, advertisement or billboard may be erected or maintained on any Lot except that:

(i) One sign not more than three feet high or three feet wide may be maintained offering the residence for sale.

(ii) One garage sale sign not more than three feet high or three feet wide is permitted on the Lot when a permitted garage sale is being held, provided such signs are erected in accordance with City code and are removed within two 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 is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election.

No signs offering a residence for rent shall be allowed in the Subdivision.

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

(q) No trash, refuse, or garbage can or receptacle shall be placed on any Lot 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.

(r) Garage doors shall remain closed at all times except when necessary for vehicle ingress and egress.

(s) No residence or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental of less than one month duration or under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (ii) rental to roomers or boarders, (i.e., rental to one or more persons of a portion of a residence only). No lease may be of less than an entire residence. Each lease shall be in writing, shall require that the tenant and other occupants comply with all provisions of this Declaration, shall provide that the lease shall be subject in all respects to the provisions of this 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 this Declaration shall be a default under the lease. Prior to the



commencement of the term of a lease, the 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. Notwithstanding the existence of a lease, the Owner shall remain liable for all obligations, including, without limitation, the payment of dues, under this Declaration with respect to the Lot.

(t) The Developer and the Association may enforce the foregoing restrictions by establishing and levying fines and other enforcement charges, having vehicles, trailers or other apparatus towed away at the Owner's expense, or taking such other lawful actions as it, in its sole discretion, deems appropriate.

8. Animals. No animals of any kind shall be raised, bred, kept or maintained on any Lot 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 Lot 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 Lots owned by others.

9. Lawns, Landscaping and Gardens.

(a) In all events within four months following commencement of occupancy of the residence, 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 Lot may leave or subsequently create a portion of the Lot as a native area with the express written permission of the Approving Party. No lawn shall be planted with zoysia grass.

(b) In all events within four months following commencement of occupancy of the residence, the Owner thereof shall landscape the Lot to the same standards as that generally prevailing throughout the Subdivision (which shall include, but not be limited to, a minimum expenditure of \$2,500.00 per Lot on foundation plantings in the front yard). All landscaping shall be installed in accordance with the landscaping plans approved by the Developer.

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

(d) All vegetable gardens shall be located behind the rear corners of the residence (as determined by the Approving Party) 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 Lot, except with the prior written consent of the Approving Party.



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

(f) 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 Lot (including any trees planted by or for the Developer, but excluding those in a Common Area maintained by the Homes Association).

10. Tree Preservation Easements. Each Lot containing a Tree Preservation Easement "TPE" as shown on a Plat of the Subdivision shall be prohibited from placing man-made structures (except fences as approved by the Approving Party) and from cutting or removing live trees within the area of the Tree Preservation Easement. The Approving Party may make exceptions from this prohibition in the case of diseased or damaged trees.

11. 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, governmental authorities, the Developer and the Homes Association 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 Lot in the Subdivision for the purpose of performing the powers and duties of the Homes 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.

The Developer and the Homes Association, through its authorized representative(s), may at any reasonable time enter any Lot, without being deemed guilty of trespass, for the purpose of inspecting the Lot and any improvements thereon to ascertain any compliance or noncompliance with the requirements and terms of this Declaration and/or any plans approved hereunder.

In the event any easement rights granted in this Section are exercised with respect to any Lot, the party so exercising such easement rights shall exercise the same in a reasonable manner so as to minimize all adverse effects on the Owners and shall promptly repair any damages to such Lot resulting from the exercise of such easement rights and restore the Lot to as near the original condition as possible.

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

12. Common Areas.

(a) The Developer shall have the right (but is not obligated) to provide Common Areas for the use and benefit of the Subdivision. The size, location, nature and extent of improvements and landscaping, and all other aspects of the Common Areas that are provided by the Developer, shall be determined by the Developer in its absolute discretion.

(b) The Developer and its successors, assigns, and grantees, as Owners, and the Homes Association (and its members) 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 Lot. All such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.

(c) 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 11 above.

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

(e) Owners of Lots adjacent or nearby the Common Areas shall prevent erosion and pollutant discharges and runoff onto the Common Areas.

(f) The following rules, regulations and restrictions shall apply to the use of any Green Areas:

(i) No automobiles, motorcycles, all terrain vehicles, or other motorized vehicles or apparatus of any kind shall be allowed in the Green Areas except for parking in any designated parking lots.

(ii) No refuse, trash, or debris shall be discarded or discharged in or about the Green Areas except in designated trash bins.

(iii) Access to the Green Areas shall be confined to designated common areas, except that owners of Lots adjacent to the Green Areas may have access to the area from their respective lots.

(iv) The Developer and the Homes Association shall have reasonable access through all Lots to the Green Areas.



(g) 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.

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

13. 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. The foregoing provisions of this subsection (a) shall not apply until the Turnover Date. Until the Turnover 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 6 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 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 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.

14. No Liability for Approval or Disapproval.

(a) Neither the Developer, nor the Homes Association, nor any member of the Architectural Committee or the Board (or any committee thereof) 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.

(b) If any Owner commences a lawsuit or files a counterclaim against the Homes Association, the Board, the Architectural Committee, or any individual member, director, officer or employee thereof, and such Owner fails to prevail in such lawsuit or counterclaim, the Homes Association, the Board, or individual sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit or counterclaim, including reasonable attorneys' fees. Such recovery right shall constitute a lien against the Owner's Lot and shall be enforceable against such Lot.

(c) To the fullest extent permitted by law, the Homes Association shall indemnify each officer and director of the Homes Association, and Developer (to the extent a claim may be brought against Developer by reason of its appointment, removal of or control over, or failure to control, any such other persons) (each, an "Indemnified Party") against all expenses and liabilities, including, without limitation, attorneys' fees, reasonably incurred by or imposed upon the Indemnified Party in connection with any action or proceeding, or any settlement thereof, to which the Indemnified Party may be a party or in which the Indemnified Party may become involved by reason of serving or having served in such capacity (or, in the case of Developer, by reason of having appointed, removed or controlled or failed to control any officer or director of the Association), provided the Indemnified Party did not act, fail to act or refuse to act with fraudulent or criminal intent in the performance of the Indemnified Party's duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which any Indemnified Party may be entitled at law or otherwise.



15. 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 Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the agreements, restrictions and reservations set forth herein as applied to the 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 Lot shall be personally responsible for breaches committed during such builder's ownership of such Lot and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Lot to the extent notice of such breach was filed of record, as provided in the third paragraph of this Section, 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 Lot, the Developer or the Homes Association may file with the Recording Office a certificate setting forth public notice of the nature of the breach and the Lot 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.

The Developer may, under special situations or circumstances as determined by it, allow variances or waivers of the requirements or terms set forth in this Declaration. Any such variation or waiver so granted by the Developer shall not constitute a waiver of such requirement or term in any other situation or under any other circumstances.

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).

16. Assignment of Developer's Rights. The Developer shall have the right and authority, by written 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.

17. Release or Modification of Restrictions.

(a) The provisions of this Declaration shall remain in full force and effect until December 31, 2034, 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 Lots within the Subdivision as then constituted may release the Subdivision, from all or part of such provisions as of December 31, 2034, or at the expiration of any extension period, by executing (in one or more counterparts), acknowledging and recording in the Recording Office an appropriate agreement in writing for such purpose, at least one year prior to December 31, 2034, 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. After the recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be amended, modified or terminated in whole or in part, at any time by a duly acknowledged and recorded written instrument executed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors of the Homes Association and then approved at a duly held meeting of the members of the Homes Association (called in whole or in part for that purpose), by the affirmative vote of Owners owning at least two-thirds (2/3) of the Lots.

(b) Anything set forth in this Section 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 in the Recording Office a written instrument for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such



agency of the Subdivision or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable Veteran's Administration or Federal Housing Administration or similar programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision or any other area, (iii) a typographical or factual error or omission needs to be corrected in the opinion of the Developer or (v) any action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision. No such amendment by the Developer shall require the consent of any Owner.

(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 individual signing this Declaration on behalf of the Developer or the now-living children and grandchildren of the individual signing this Declaration on behalf of the Developer as of the date of such execution.

18. 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 tract, street, park or right-of-way) by executing, acknowledging and recording in the Recording Office a written instrument 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.

19. 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.

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

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

MACKEY HOMES, INC.

By: Michael W. Mackey
Michael W. Mackey, President

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on May 6th, 2004 by Michael W. Mackey, President of Mackey Homes, Inc., a Kansas corporation.

Carrie Ellis
Notary Public

Print Name: Carrie Ellis

My Commission expires:

August 25, 2004

CARRIE ELLIS
Notary Public - State of Kansas
My Appt. Expires 8-25-04