

EN
STEVE FOLEY
17834 GARNETT
OLATHE KS 66062

2011-03378

AMENDED DECLARATION OF RESTRICTIONS

TO

SWEETWATER CREEK SUBDIVISION

WHEREAS, Sweetwater Creek is a subdivision in Miami County, Kansas, which plat was recorded on August 10, 2004, in the office of the Register of Deeds of Miami County, Kansas, in Book 832, Page 412, and is known as "Sweetwater Creek"; and

WHEREAS, certain restrictions are placed on the following described land to-wit:

Lots 1 to 188, inclusive, Sweetwater Creek, a subdivision in the City of Spring Hill, Miami County, Kansas; and

WHEREAS, § 18 of the Declaration of Restrictions filed August 10, 2004, provides for the modification of the Declaration upon the filing of a written agreement signed by the owners of 51% or more of the lots so restricted; and

WHEREAS, upon the filing with the Register of Deeds of Miami County, Kansas, of a written agreement so signed, this Amended Declaration of Restrictions shall become effective and replace the Declaration filed August 10, 2004; and

WHEREAS, the purpose of the Amended Declaration is identical to the purpose underlying the original Declaration; to wit:

To preserve and enhance the values, desirability and attractiveness of the development and improvements constructed thereon and to keep the use consistent with the intent of the developer, all of which restrictions shall be for the used and benefit of Steve Foley Construction Company, Inc., and its future grantees, successors and assigns; and

WHEREAS, certain modifications to the original Declarations are necessary in order for the restrictions to remain appropriately relevant.

NOW, THEREFORE, all of the above-described lots shall be and are hereby restricted as to their use in the manner hereinafter set forth.

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



2011-03378

KATIE FORCK

MIAMI COUNTY REGISTER OF DEEDS

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a. The term "Lot" shall mean any lot as shown as a separate lot on any recorded plat of all or part of the District; provided, however, that if an Owner, other than Developer, owns all or part of one or more adjacent lots upon which only one residence has been is being, or will be erected, then such adjacent property under common ownership shall be deemed to constitute only one "Lot".

b. The term "District" shall mean all of the above-mentioned lots in Sweetwater Creek, Common Areas, if any, and all additional property which hereafter may be made subject hereto in the manner provided herein.

c. The term "Developer" shall mean and refer to Steve Foley Construction Company, Inc., a Kansas Corporation, and its successors ad assigns.

d. The term "Owner" shall mean the record owner in fee simple of any Lot, including Developer, and for purposes of all obligations of the Owner hereunder, shall include, where appropriate, all family members, tenants of such Owner and all of Owner's guests and invitees.

e. The term "Common Areas" shall mean (i) street right-of-ways, (ii) streets and street islands, (iii) entrances, monuments, berms and other similar ornamental areas and related utilities, sprinkler systems and landscaping constructed or installed by or for Developer at or near the entrance of any street or along any street, and any easements related thereto, and (iv) all other similar areas and places, together with all improvements thereon and thereto (including any swimming pool or similar recreational facilities, if any, that may be constructed or erected), the use, benefit or enjoyment thereof is intended for all of the Owners within the District, whether or not any "Common Area" is located on any Lot.

f. The term "Streets" shall mean any public street, road, terrace, circle or boulevard shown on any recorded plat of all or part of the District.

g. The term "Homes Association" shall mean Sweetwater Creek Homes Association, the Kansas not-for-profit corporation formed by Developer on August 30, 2005, for the purpose of serving as the homes association for the District.

h. The term "Exterior Structure" shall mean 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 or other animal shelter or

run, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, basketball goal, trampoline, playhouse, treehouse or other recreational or play structure.

i. The term “Certificate of Substantial Completion” shall mean a certificate executed, acknowledged and recorded by Developer stating that all, or at Developer’s discretion, substantially all, of the Lots in the District (as then composed or contemplated by Developer) have been sold by Developer and the residences to be constructed thereon are substantially completed; provided, however, that Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in its discretion at any time and for any limited purpose hereunder.

j. The term “Approving Party” shall mean (i) prior to the recording of the Certificate of Substantial Completion, Developer (or its designees), and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Homes Association.

k. The term “Architectural Committee”, for purposes of certain Exterior Structures as provided in Section 8 below, shall mean (i) prior to the recording of the Certificate of Substantial Completion, Developer (or its designees), and (ii) subsequent to the recording of the Certificate of Substantial Completion, a committee composed of at least three (3) members of the Homes Association who shall be appointed by the Board in an impartial manner from the Homes Association members who indicate a willingness to serve on the committee.

2. Use of Land. None of the Lots may be improved, used or occupied for other than single-family, private residential purposes, and no duplex, flat or apartment house, although intended for residential purposes, may be erected thereon. No residential building which has previously been at another location shall be moved onto any Lot. No “earth” homes shall be permitted. No trailer or outbuilding erected on any Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any residence of a temporary character be erected on any of such Lots or used for human habitation; provided, however, that nothing herein shall prevent Developer or others (including, without limitation, builders and real estate sales agencies) authorized by Developer from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales or storage purposes during development of the District.

Building Material Requirements. Building materials shall be such as comply with the applicable municipal code for residential structures. All exterior doors shall be functional. Roofs shall be covered with a dimensional 40-year asphalt fiberglass shingle or equivalent in weathered gray color. Any building products that may be or come into general usage for dwelling construction of comparable quality and style in the area shall be acceptable if approved in writing by the Approving Party. All wood exteriors shall be covered with a workmanlike finish of one coat of high quality paint or stain. No building shall be permitted to stand with its exterior in any unfinished condition for longer than five (5) months after commencement of construction. All exterior basement foundations and walls which are exposed in excess of twelve (12) inches above final grade shall be painted the same color as the residence or covered with siding compatible with the structure.

3. Minimum Floor Area. No residence shall be constructed upon an Lot in the District without meeting the required square footage. A total finished floor area of one thousand seven hundred fifty (1,750) square feet is required for a ranch style plan, while two thousand two hundred (2,200) square feet is required for a two-story plan. The Approving Party, in its discretion, may allow variances under the foregoing minimum square footage requirement, provided the total reduction for any residence may not exceed ten percent (10%) of such minimum floor area requirement for such residence.

4. Approval of Plans and Post-Construction Changes.

a. Notwithstanding compliance with the provisions of Sections 2 and 3 above, no residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, materials, location, elevations, Lot grading plans, general landscaping plans and exterior color scheme have been submitted to and approved in writing by Approving Party or, in the case of Exterior Structures as provided in Section 8 below, the Architectural Committee. Nor shall any change or alteration in such building plans, specifications, materials, location, elevations, grading plans, landscaping plans or exterior color scheme thereof be made until such change or alteration has been submitted to and approved in writing by the Approving Party. All building plans and plot plans shall be designed to minimize the removal of existing trees, shall designate those trees to be removed and shall protect those trees that are to remain.

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

c. All final grading of any Lot shall be in accordance with the master grading plan approved by Developer. No changes in the final grading of an Lot shall be made without the written approval of the Approving Party.

5. Set Backs. No building, exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections, shall be located closer to any street than the building setback lines, if any, shown on the plat; provided, however, that Approving Party, in its discretion, may waive or alter any such building setback lines to the extent they are greater than the minimum setbacks required by the City of Spring Hill, Kansas.

6. Commencement and Completion of Construction. Unless the following time periods are expressly extended by developer in writing, construction of the residential buildings on a Lot shall be commenced within six (6) months following the date of delivery of deed from developer to the purchaser of such Lot and shall be completed within twelve (12) months after such commencement.

7. Exterior Structures.

a. No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) with and pursuant to the advance written approval of the Architectural Committee, and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below: provided, however that the approval of the Architectural Committee shall not be required for any Exterior Structure erected by or at the request of Developer or any Exterior Structure that has been specifically approved by Approving Party prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by Approving Party and has been built in accordance with such approved plans.

b. (i) Only wood or wrought iron (or similar decorative) 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. All wood fences shall be of picket (non-solid) style and not exceeding four feet in height, except that solid-style wood fences not to exceed five feet in height may be permitted as screening around a patio area but not along the length of a property line. No fence may be installed in any Landscape Easement. Unless and until otherwise specifically approved in writing by the Approving Party, (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, (C) all fences must be joined to or abutting any previously existing fences on adjacent Lots, and (D) all fences shall be stair-stepped to follow the grade of the Lot.

(ii) All basketball goals shall be 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 basketball goals shall be consistent with the Architectural Committee. All backboards shall be clear or painted white and all poles shall be a neutral color. There shall be only one basketball goal per Lot. The Architectural Committee 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 Lots.

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

(iv) No swimming pools of any kind may be constructed or installed without approval in writing by Developer or the Architectural Committee. All approved pools shall be fenced or otherwise adequately screened. All approved pools shall be kept clean and maintained in operable condition.

(v) Dog runs or pens shall be permitted. Location and design must be approved by the Architectural Committee.

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

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

a. Except as otherwise provided in Section 2 herein, no residence or Exterior Structure 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 or her residence in accordance with the applicable ordinances or the City of Spring Hill, Kansas.

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

c. No vehicle, trailer, bus, van, camper, boat or similar apparatus shall be (i) parked, left or stored in any yard or lot; or (ii) parked, left or stored on any street for more than a 24-hour period. No trailer, bus, camper, boat or similar apparatus shall be parked, left or stored in any driveway for more than a 24-hour period. It is the intent of the parties hereto that all automobiles, pickups and vans shall be kept in an enclosed garage whenever possible. Motorized vehicles shall not be operated on any Lot or Common Area, if any, other than in the street.

d. No satellite dishes in excess of 24 inches or any other type of antenna shall be affixed to or placed upon the exterior walls, roof or any party thereof or installed on any subdivision Lot or any common area.

e. All garage doors shall remain closed at all times except when necessary for entry and exit. Garage doors remaining open due to the parking or storage of over-sized items shall be deemed to be in violation of these Restrictions.

f. No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard.

g. All residential service utilities shall be underground.

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

i. No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any yard. Storage shall be permitted under a deck provided such area is fenced or otherwise screened.

j. No fuel storage tanks of any kind shall be permitted.

k. No driveway shall be constructed in a manner so as to permit access to a street across a rear Lot line.

9. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other common household pets may be kept so long as they are not kept, bred or maintained for commercial purposes and do not constitute a nuisance to the neighbors or neighborhood. Subject to any more restrictive law or ordinance, in no event shall more than three (3) dogs or cats, or combination thereof, be raised, kept or maintained on any Lot.

10. Landscaping and Lawns. Prior to occupancy, and in all events within (5) months after commencement of construction, all lawns, including all areas between each residential building 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 the Lot may leave a portion of the Lot as a natural area with express written permission of Developer. No lawn shall be planted with zoysia grass. Prior to occupancy, and in all events within five (5) months following commencement of construction of the residence, the Owner thereof shall landscape the Lot to the same standards as generally prevail throughout the District and in accordance with the plans approved by Developer. All vegetable gardens shall be located in the backyard. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a

length of grass not to exceed four (4) inches and shall properly maintain and replace all trees and landscaping.

11. Easements for Public Utilities; Drainage; Maintenance.

a. 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 mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefore, over, under, upon and through all easements and rights-of-way shown on the recorded plat of the District. All utility easements and rights-of-way shall inure to the benefit of all utility companies for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of Developer, all Owners in the District and the Homes Association as a cross-easement for utility line or service maintenance.

b. Developer shall have and does hereby reserve for itself, 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 District for the purpose of performing the duties of the Homes Association and maintaining any Common Area, if any.

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

12. Common Areas.

a. Developer and its successors, assigns and grantees, as owners of Lots in the District, shall have the right and easement of enjoyment in and to all of the Common Areas, if any, but only for the intended use thereof. Such right and easement shall be appurtenant to, and shall automatically pass with, title to each Lot and shall be subject to the rights (including ownership) of any governmental authority or any utility therein of thereto.

b. The ownership by the Homes Association of any Common Area, if any, and the right and easement of enjoyment of the Owners in the District as to any Common Area, if any, shall be subject to the right of Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon and through such Common Area, if any, as provided in Section 11 herein.

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

d. Developer and the Homes Association shall have the right to make additional rules, regulations and restrictions pertaining to the use of any common Area, if any.

13. Architectural Committee.

a. If possible, no more than two (2) Architectural Committee members shall be from any one (1) particular plat located within the subdivision of Sweetwater Creek, and no more than two (2) members of the Board shall serve on the Architectural Committee at any time. The positions on the Architectural Committee shall be divided into two (2) classes with staggered two-year terms. No committee member shall serve for more than two (2) consecutive terms (a full term being defined as 18 or more months.) The provisions of this subsection (a) shall not apply until after the recording of the Certificate of Substantial Completion. Until such date, Developer shall serve as the Architectural Committee.

b. The Architectural Committee shall meet at least once each quarter, and more often if necessary, to consider applications with respect to any Exterior Structures that require the approval of the Architectural Committee as provided in Section 8 herein. Any application that is not acted upon by the Architectural Committee within 45 days of the date on which it is filed shall be deemed to have been not approved. A majority of the members of the Architectural Committee shall constitute a quorum for 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. Notwithstanding anything contained in this subsection to the contrary, until the recording of the Certificate of Substantial Completion, the Developer shall serve as the Architectural Committee and shall consider applications on an as-needed basis.

c. The Architectural Committee shall consider and act upon applications that have been submitted to it for approval with respect to Exterior Structures. In making its decisions, the Architectural Committee may consider any and all aspects and factors that the committee members in their absolute discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Sweetwater Creek neighborhood including, without limitation, the plans, specifications, exterior colors, material, location, elevation, landscaping and

use of the 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 guidelines and conditions that it intends to follow in making its decisions.

d. After the recording of the Certificate of substantial Completion, any applicant who is dissatisfied with the 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 fifteen (15) days of the date the Architectural committee renders its decision. Any decision rendered by the Board on appeal shall be final and conclusively binding on the applicant.

14. No Liability for Approval or Disapproval. Neither Developer, nor the Homes association, nor any member of the Architectural Committee or of the Board shall be personally liable to any person for any discretionary approval, disapproval or failure to approve any matter submitted for approval, for the adoption of any rules, regulations or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in the Declaration.

15. Covenants Running With the Land; Enforcement. The agreements, restrictions and reservations herein set forth are, and shall be, covenants running with the land into whosoever hands any of the property in the District shall come. Developer and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions and reservations. No agreement, restriction or reservation herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during its or his or her seizing of title to such Lots; provided, however, that 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. The Approving Party shall have exclusive standing to seek enforcement of the terms of the Amended Declaration. Such enforcement rights shall include any proceeding at law or in equity (including injunctive relief) to enforce all restrictions, conditions, covenants, reservations, liens and easements, now or hereinafter imposed by this Amended Declaration. Failure to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. The successful enforcement of these restrictions shall entitle the Approving Party to recover the expenses of enforcement,

including, but not limited to, reasonable attorney's fees, court costs, and the costs of participating lay and expert witnesses, from the party found to be in violation of the Amended Declarations.

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

17. Release or Modification of Restrictions. The provisions of this Amended Declaration shall remain in full force and effect until December 31, 2020, and shall automatically be continued thereafter for successive periods of five (5) years each; provided, however, that the then Owners of a majority of the Lots may Release the District, or any part thereof, from all or part of such provisions as of December 31, 2020, 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 (1) year prior to the original expiration date or to a subsequent expiration date, whichever is applicable. The provisions of this Amended 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 the Owners of not less than 51% of the Lots hereby restricted, including Lots owned by Steve Foley Construction Company, Inc., and filing of same for record in said office of the Register of Deeds in and for Miami County, Kansas.

18. Extension of District. Developer shall have, and expressly reserves, the right from time to time to add to the existing District and to the operation of eh provisions of this Amended Declaration such other adjacent (without reference to the streets) lands as it may now own or hereafter acquire by executing, acknowledging and recording an appropriated 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 contain such deletions, additions and modifications of the provisions of

this Amended Declaration applicable solely to such additional property as may be necessary to desirable as solely determined by Developer in good faith.

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 any part thereof, but they shall remain in full force and effect.

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

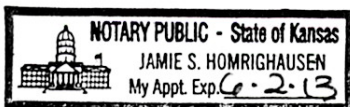
STEVE FOLEY CONSTRUCTION COMPANY, INC.

By: Steven G. Foley
Steven G. Foley, President

STATE OF KANSAS)
) ss:
COUNTY OF Miami)

BE IT REMEMBERED that on this 30th day of August, 2011, before me, the undersigned, a notary public in and for the county and state aforesaid, came Steven G. Foley, in his capacity as President of Steve Foley Construction Company, Inc., a Kansas corporation, who is personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Jamie S. Homrighausen
Notary Public

My Appointment Expires: 6.2.2013