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REBECCA L. DAVIS
REGISTER OF DEEDSDeclaration of RestrictionsPLUM CREEK

WHEREAS, a plat of land know as PLUM CREEK, has been filed with the register of Deeds of Johnson County, Kansas at Plat Book 118, Page 35 and

WHEREAS, said plat creates said PLUM CREEK, composed of lots and tracts described on Exhibit "A" attached hereto; and

WHEREAS, said plat dedicates to the public all the streets and roads shown on the said plat for use by the public: and

WHEREAS, Indian Wells Development, LLC, A Kansas Limited Liability Company ("Developer") is the owner of all land shown on the aforesaid plat and now desires to place certain restrictions thereon, all of which restrictions being for the use and benefit of the developer, and for its future grantees and assigns.

NOW, THEREFORE, in consideration of the premises, the Developer for itself and its successors, grantees and assigns, hereby agrees that all of the lots, tracts and land shown described on Exhibit "A" shall be and they are hereby restricted as to their use in the manner hereinafter set forth.

DEFINITION OF THE TERMS USED

For the purposes of these restrictions, the word "Developer" shall mean Indian Wells Development, LLC, A Kansas Limited Liability Company.

The word "street" shall mean any street, road, drive, or terrace of whatever name, as shown on said plat of PLUM CREEK.

The work "outbuilding" shall mean an enclosed or unenclosed, covered structure, not directly attached to the residence to which it is appurtenant.

The word "lot" may mean either any numbered lot as platted, or any tract or tracts of land conveyed, which may consist of one or more numbered lots, as platted and upon which a residence may be erected in accordance with the restrictions hereinafter set forth, or as set forth in individual deeds. A "corner lot" shall be deemed to be any lot as platted, or any tract of land conveyed, having more than one street contiguous to it.

The word "tract" shall mean any area identified by a letter of the English Alphabet or as otherwise identified and shown on said plat.

The term "district" as used in this agreement shall mean all of the land described on Exhibit "A" attached hereto (herein "PLUM CREEK"). If or when other land shall, in the manner hereinafter provided for, be added to that described above, then the term "district" shall thereafter mean all land which shall from time to time be subjected to the terms of this agreement, including any future modifications thereof. The term "improved property" as used herein, shall be deemed to mean a single tract under a single ownership and use, and on which tract a residence has been erected or is in the process of erection or on which any other building not in violation of the restrictions then of record thereof is erected or is in the process of erection. Any such tract may consist of one or more contiguous lots or part or parts thereof. Any other land covered by this agreement shall be deemed to be vacant and unimproved.

The term "public places" as used herein shall be deemed to mean all streets.

The term "owners" as herein used shall mean those persons or companies or corporations who from time to time own the land within the district.

The term "structure" shall mean anything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground and shall have the broadest meaning consistent with the intent of these Restrictions to create and maintain the highest standards of quality and aesthetics within PLUM CREEK.

PERSONS BOUND BY THESE RESTRICTIONS

Those who execute this instrument and all persons and corporations who or which may own or shall hereafter acquire any interest in the above described lots hereby restricted shall be taken to hold and agree and covenant with the owners of said lots, and with their successors and assigns, to conform to and observe the following covenants, restrictions, and stipulations as to the use thereof and the construction of residences and improvements thereon for a period of time ending on December 31, 2026 provided, however, that each of said restrictions shall be renewed in the manner hereinafter set forth.

The covenants are to run with the land and shall be binding in all owners within this subdivision and their grantees, heirs and assigns and all persons claiming under them until December 31, 2026 and shall be automatically continued thereafter for successive periods of twenty five (25) years each, unless the owners of the fee title to the majority of said lots shall be resolution at a special meeting called for that purpose upon mailed notices to all such owners, release, change or alter any or all of the said restrictions at the end of any such twenty five (25) year period within two (2) years prior to said expiration. The following restrictions or protective covenants shall be kept by all persons owning, occupying or using said land and may be enforced by injunction, mandatory or otherwise; the Association may recover its reasonable fees in connection with such proceedings.

If any party hereto, or any of its grantees or assigns, shall violate or attempt to violate any covenants herein, it shall be lawful for any other person or persons owning any real estate in PLUM CREEK to prosecute any proceedings at law or equity against the person or persons violating or attempting to violate any such covenants and either prevent him or them from so doing or to recover damages for such violation.

Invalidation of any one of these restrictions by judgement or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

1. No lot in PLUM CREEK shall be used except for residential one-family residences. No building shall be erected, altered, placed or permitted to remain on any lot, other than one detached single-family dwelling not to exceed three (3) stories in height, not exceeding thirty-five (35) feet, pursuant to the city of Gardner, as amended, and an attached private garage for not less than two cars.
2. No lot shall be in any way subdivided. No building shall be erected, placed or altered on any lot until construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design and colors with existing structures and landscape, and as to location with respect to topography and finished grade elevation, exterior colors of dwellings, outbuildings and structures shall at all times be subject to the approval of the Architectural Control Committee. No fences shall be erected, placed or altered without the prior approval of the Architectural Control Committee. Approval shall be as provided in paragraphs 2A and 2B herein.
 - A. The Architectural Control Committee will be composed of the Board of Directors, then current of the PLUM CREEK HOME OWNERS' ASSOCIATION. Until such time that there exists a Board of Directors of the PLUM CREEK HOME OWNERS' ASSOCIATION, the Developer will act as the Architectural Control Committee. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the committee, nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.
 - B. It is expressly agreed that the Architectural Control Committee referred to in (A) above shall have control over completed homes whose owners are members of the PLUM CREEK HOME OWNERS' ASSOCIATION at or after the recording of this Declaration; exclusive control of new homes to be constructed after the date of the filing of this Declaration shall be vested solely in Developer, until such time as the homes are sold and the owners thereof become subject to this Declaration of Restrictions and any homes association declaration, at

which time said homes will then become subject to the Architectural Control Committee.

- C. No building shall be located nearer than Thirty (30) feet to the existing street lot line as shown in the recorded plat(s) of Indian Wells.
- D. No building shall be located nearer than nine (9) feet to any interior lot line.
- E. For the purposes of these covenants, eaves, steps and open porches shall be considered a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.
- F. No fencing shall be permitted upon any of the lots unless such fencing shall be built with methods and material which harmonize with external design of building in PLUM CREEK; no fence shall exceed six (6) feet in height and ALL fences shall be subject to the approval of the Architectural Control Committee and the City of Gardner, Ks.
- G. All constructed houses shall have external driveways consisting exclusively of properly constructed concrete surfaces; all lots, regardless of house location thereon, shall be fully sodded provided, however, no sodding shall be required where, in the opinion of the Architectural Control Committee, soil lighting or topographical conditions would make sodding impractical or unreasonable expensive, and provided further that no duty to clear any tract of trees, bushes, shrubs or natural growths which are kept reasonably attractive shall be implied.
- H. Each lot shall be used for a single family residence only; provided, however, that the developer reserves the right to utilize one or more lots for common areas or common amenities.
- I. The above lots may be improved, used or occupied only for private residences, and no flat, duplex or apartment house, though intended for residential purposes, may be erected thereon.
- J. No residence shall be more than three stories in height, except that split-level construction shall be permitted.
- K. No trailer, basement, tent, shack, garage, barn or other outbuilding shall at any time be used as a residence, temporarily or permanently, nor shall any residence of temporary character be permitted.
- L. No dwelling or residence shall be occupied until fully completed, except for exterior painting and minor trim details, and such dwelling or residence must be fully completed within twelve (12) months after the first earth excavation is started. In the event of fire, windstorm, or other damage, no building shall be permitted to remain in damaged condition longer than three (3) months.
- M. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats, or other household pets may be kept, provided they are not kept, bred, or maintained for any commercial purpose, and further provided that no more than two (2) dogs and/or cats shall be kept on any residential lot.

- N. No school or other buses, motor homes, mobile homes, autos, campers, camper-trailers, recreational vehicles, tractors or trucks shall be parked at the curb for more than twenty-four (24) hours at any one time. No school bus, camper, motor home, mobile home, camper-trailer, recreational vehicle, tractor, truck with a capacity in excess of $\frac{3}{4}$ ton truck with camper attached or boat shall be parked or left outside on any lot for more than twenty-four (24) hours at any one time. No major work shall be done on any car, truck, trailer or other vehicle while parked outside the garage or in the street. No cars, buses, boats, trucks, race cars, wrecked cars, modified stock cars, trailers, or vehicles that are not in **OPERATING CONDITION** with current license plate or whose presence might create an unsightly appearance or create a nuisance or be a hazard to life or health shall be allowed to be parked or left on any lot or at the curb. No trash, old appliances, junk or other refuse shall be allowed to accumulate on any lot in the subdivision.
- O. All doors on garages located on the lots hereby restricted shall be kept closed, except when opened for the purpose of parking or removal of motor vehicles.
- P. No exterior clothesline or poles may be erected or maintained on any of the lots hereby restricted.
- Q. No exterior holiday lights and/or holiday decorations may be erected or maintained on any of the lots hereby restricted, except during a sixty (60) day period.
- R. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Outside trash burning shall be prohibited, except on lots that have residences under construction.
- S. No radio or television aerial wire, antenna, antenna tower, satellite dish or energy collector shall be maintained outside of any structure, unless approved in advance by the Architectural Control Committee.
- T. No tanks for the storage of oil or other fluids may be maintained on any portion of the premises above or below the surface of the ground, except when deemed necessary by the owner, subject to the exclusive prior approval of the Architectural Control Committee, which shall be prerequisite to the permissible construction of said tanks.
- U. No trash, ashes, or other refuse shall be thrown, dumped or placed upon any undeveloped portion of said land.
- V. Lawns shall be kept in good condition as soil, climate and other natural conditions permit, and grass shall not be permitted to create an unsightly appearance.
- W. Any property owner or property subject to the restrictions herein set forth may construct, for their personal use, one in ground swimming pool. No above ground swimming pools shall be permitted; said owners of property subject hereto shall further be allowed to construct

- a properly designed tennis court, however, no lighting shall be permitted on said tennis court for evening use. All swimming pools and tennis courts shall be subject to Architectural Control Committee approval.
- X. No detached storage buildings/structures shall be allowed without the approval of the Architectural Control Committee.
 - Y. No solar panels or solar collectors shall be installed or maintained on the exterior of any residence or on any lot without the approval of the Architectural Control Committee.
 - Z. No basketball goals shall be permitted without the approval of the Architectural Control Committee as to the height, placement and construction materials.
 - AA. No signs of any type shall be allowed, whether or not attached to a dwelling, except such signs as may be erected, placed or approved by the Developer or the Association; provide, however, that one (1) sign listing property for sale, not exceeding two feet by two feet, may be erected on each lot.
3. Easements for installation and maintenance of utilities and drainage facilities are reserved on the front, side, or rear of each tract. Within these easements, no structure, planting or other material shall be permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channel in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the tract, except for those improvements for which a public authority or utility company is responsible.
4. All single story residences shall have a total finished ground floor area of not less than 1600 square feet. All two-story residences shall have a total finished floor area of 1600 square feet. All one and one-half story residences shall have a total finished floor area of 1600 square feet.
5. All roofs shall have a life expectancy of at least thirty (30) years, ALL shall be subject to the approval of the Architectural Control Committee.
6. No structure shall be moved unto any of the property hereby restricted and no outbuilding, structure or appurtenance whatsoever shall be erected, installed or place on the property hereby restricted without the prior approval of the Architectural Committee.
7. It is agreed that if the owner of any vacant lot fails or refuses to cut weeds or brush from the cleared portions of the property, then the Architectural Committee shall have authorization to do so and the cost thereof may be taxed as a lien against the property.

Exhibit "A"

Lots 1 through 44 and Tracts A,B, & C, PLUM CREEK, a subdivision in the City of Gardner, Johnson County, Kansas.

OPTION TO EXCLUDE APPLICABILITY
OF THE TERMS AND CONDITIONS OF THE FOREGOING
DECLARATION TO CERTAIN REAL PROPERTY
TO WHICH SAID DECLARATION APPLIES

The parties hereto expressly agree and stipulate that the legal owner of all of the real property described herein, INDIAN WELLS DEVELOPMENT, LLC shall have the power to waive any or all of the restrictions or covenants contained herein as to said real property remaining undeveloped or unimproved and under the ownership of INDIAN WELLS DEVELOPMENT, LLC or DD & ASSOCIATES, INC.

IN WITNESS WHEREOF, the undersigned has executed this instrument this day 26th of April, 2001.

INDIAN WELLS DEVELOPMENT, LLC, A Kansas Limited Liability Company

By: Stephen J. Shumate, MEMBER

STATE OF KANSAS, JOHNSON COUNTY, ss:

BE IT REMEMBERED, that on this 26th day of April, 2001, before me the undersigned, a Notary Public in and for the county and state aforesaid, came Stephen J. Shumate, of Indian Well Development, LLC, who is personally known to me to be the same person who executed, as such member, the within instrument, and such person duly acknowledged the execution of the same to be the act and deed of said company.

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

Vicki L. Winters
Notary Public

My appointment expires:

