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2006-02183

KATIE FORCK

MIAMI COUNTY REGISTER OF DEEDS

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DECLARATION OF RESTRICTIONS
TO LOTS 1-8, BLOCK 5; LOTS 1-9, BLOCK 6;
LOTS 6-10, BLOCK 9 AND LOTS 1-4, BLOCK 10, ALL IN
HEATHERWOOD ESTATES FINAL PLAT

THIS DECLARATION, made on this 19th day of June, 2006, by Miami Realty Co., Inc., W. H. Debrick and Company hereinafter called OWNER.

WITNESSETH:

WHEREAS OWNER is the owner of all the real estate described in the plat of LOTS 1-8, BLOCK 5; LOTS 1-9, BLOCK 6; LOTS 5-10, BLOCK 9 AND LOTS 1-4, BLOCK 10, ALL IN HEATHERWOOD ESTATES FINAL PLAT, a Subdivision, addition to the City of Paola, Miami County, Kansas, and has caused the same to be sub-divided into lots, streets, avenues, drives, and public ways, all of which is recorded in the Office of the Register of Deeds of Miami County, Kansas, the 18th day of May, 2005, in Plat slide 215 - 33.

WHEREAS, OWNER desires to place restrictions on said Lots for the use and benefit of the present owner and for the use and benefit of its future grantees.

NOW, THEREFORE, it is hereby declared that all of the lots shall be held, sold, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the following easements, restrictions, covenants, and conditions, which shall run with the land, and which are for the purpose of protecting the value and desirability of the lots and shall be binding on all parties having any right, title or interest in or to the lots, or any part thereof, and their restrictions, covenants and conditions shall inure to the benefit of each owner of the lots, or any part thereof.

RESERVATIONS, RESTRICTIONS AND COVENANTS: The OWNER declares that the aforesaid land shown on said Plat is held and shall be conveyed subject to the reservations, restrictions and covenants herein set forth. All of said lots are intended for sale.

The street upon which a lot fronts shall be deemed to be the front street. Any other street contiguous to such lot shall be deemed to be a side street.

DEFINITION OF TERMS USED: For the purpose of these restrictions, the word "street" shall mean any street, road, drive or avenue of whatever name, as shown on any plat of Heatherwood Estates Subdivision.

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

The word "lot" may mean either any lot as platted or any tract or tracts of land as conveyed, which may consist of one or more lots, or part or parts of one or more lots, as platted, and upon which a residence may be erected in accordance with the restrictions hereinafter set forth, or as set forth in the individual deed from Owner, or from its successors and assigns. A corner lot shall be deemed to be any lot as platted, or any tract of land conveyed, having more than one street contingent to it.

PERSONS BOUND BY THESE RESTRICTIONS: All persons, partnerships, limited partnerships, limited liability partnerships, joint ventures, corporations or any other type of business entity who now owns or shall hereinafter acquire any interest in any lot in Heatherwood Estates Subdivision agree and covenant with Owner as the exclusive owner and developer thereof at the date of the recording of this and all subsequent Declaration of Restrictions applying to all plats of Heatherwood Estates Subdivision, and with all other owners of any interest in all other lots within Heatherwood Estates subdivision, and with their respective executors, administrators, heirs, 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 June 1, 2036, provided, however that each of said restrictions shall be renewable in the manner hereinafter set forth.

USE OF LAND: The lots shall be used for single family dwelling purposes only. Each such dwelling shall have a garage attached as an integral part of the main building. No residential structure, assembled in total or in several sections at a factory and transported over the road by truck to its destination which when assembled at the destination shall have exterior building materials and appearance similar to the customary single family dwelling (commonly known as modular home) shall be permitted to be placed on any lot in the addition.

No noxious or offensive activity shall be carried on in any structure or upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

No shack, basement, garage, trailer, mobile home, tent, barn or other building erected on or moved onto any lot in the addition

shall at any time be used as a residence temporarily or permanently, nor any residence of a temporary character be permitted.

No business buildings shall be erected, nor business of any nature conducted on the land herein described.

FRONTAGE: Every dwelling erected on any lot shall front on the street on which said lot fronts. Any residence erected wholly or partially on any corner lot, or any part or parts thereof, shall front or present a good frontage on the street or streets designated in the plat of Heatherwood Estates Subdivision - Final Plat.

It is provided, however, that if any part less than the whole of any corner lot is acquired by the owner of any inside lot contiguous to said corner lot, then, as to the part of such corner lot so acquired, the provisions hereof requiring a residence erected of a corner lot to front or present a good frontage on the street or streets designated by the plat, shall not be operative, but the part of the corner lot acquired shall be deemed to be a part of the inside lot to which it is contiguous, as to the restrictions governing the frontage of the residence on the street, and said part of any such corner lot so acquired shall be subject to the restrictions applicable to the inside lot.

REQUIRED HEIGHT OF AND SIZE OF RESIDENCES, BUILDING MATERIALS, DWELLING FREE SPACE AND SETBACK LIMITATIONS, SIGN PERMITTED: The zoning, fire, building codes and other similar type of codes that are now in existence or which may be amended or adopted by the City of Paola, Miami County, Kansas, in addition to any setback lines set out in the Plat of Heatherwood Estates - Final Plat Subdivision, shall control all the height of and size of the single family dwellings, the building material allowable to be used in the construction of such residences, the minimum free space for each building lot, setback limitations and the type of and size of signs permitted to be placed on any lot.

EASEMENTS: No building or other permanent structure shall be erected or maintained on any part of any areas indicated as "easement", but the owners of lots may erect and maintain a fence, wall or hedge along the property line within such easement, but subject at all times to the prior right to use such area for public or quasi-public purposes. The right is reserved to locate, construct, erect and maintain or cause to be located, constructed, erected and maintained within the areas indicated on the plat as "easement", sewer and other pipe lines, conduits, poles and wires and any other method of conducting or performing any public or quasi-public utility or function above or beneath the surface of

the ground, with the right of access at any time to the same for the purpose of repair and maintenance. All easements dedicated for public use may be used for the drainage of surface water and may not be blocked to prevent the flow of said water.

MAINTAINING SIGHT DISTANCE: No fence, wall, hedge, or shrub shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision between a height of two and one-half (2 ½) and ten (10) feet above the grades of the bottom of the curb of the intersecting streets, measured from the point of intersection of the centerline of the streets, ninety feet in each direction along the centerline of the streets. At the intersection of major or arterial streets, the ninety foot distance shall be increase to one hundred twenty feet for such arterial leg of the intersection. The same sight line limitations shall apply on any lot within ten feet from the intersection of the street property line with the edge of a driveway. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

REPAIRING AND STORAGE OF AUTOMOBILES, BOATS, TRAILERS, ETC.:

No repair, rebuilding or manufacturing, whether for hire or otherwise, of automobiles, trucks, motorcycles, motorbikes, motor scooters, ATVs, boats, airplanes, house trailer, recreational vehicle, boat trailer, motor homes, or vehicles of any other type or descriptions, or any lawn mowers or other motorized, wheeled outdoor equipment or appliance shall be preformed or occur on any of the lots hereby restricted except that such repairs on a non-commercial basis and not for hire may be conducted in any enclosed garage building on said premises if not otherwise prohibited under other provisions of these restrictions.

No automobiles, trucks, motorcycles, motorbikes, motor scooters, ATVs, boats, airplanes, house trailer, recreational vehicle, boat trailer, motor homes, or vehicles of any other type or descriptions may be stored on any of the lots hereby restricted, except that such storage other than storage for hire shall be permitted within the confines of any home built on any of the lots hereby restricted if not otherwise prohibited under other provisions of these restrictions. Nothing in this section, however, shall be so construed as to prohibit the regular parking of not more than two vehicles, consisting only of passenger automobiles, sports utility vehicles, vans or pick-up trucks, in running condition and in reasonable state of repair and preservation on any driveway permitted to be maintained on any of the lots hereby restricted.

No equipment or material may be stored outside of any single

family residence except single items kept by the occupants for ordinary household or yard use.

FENCES: No wire or chain link fences shall be erected. No privacy types of fencing shall be used along the side and rear property lines of any lots that back up to the lake. Only picket style or wrought iron fencing no higher than four (4) feet, as measured from the ground surface, may be constructed along such property lines. Wood or plastic privacy fencing no higher than six (6) feet, as measured from the ground surface, may be erected along the side and rear portions of any Lots that do not back up to the lake. All rails and post of any privacy fence shall be on the inside. Only the "good" side shall face outward.

On corner lots, any properly constructed fence must not be nearer to the front street or the side street than the parallel projection of the side of the residence structure as actually built notwithstanding the fact that such residence structure may have been built inside the front or side building lines as platted. No fencing shall be constructed any closer to the front portion of any lot than parallel projection of the front side of the residence structure as actually built.

PETS: No wild, semi-wild or domestic mammals, reptiles or birds may be kept or harbored or maintained on any of the lots hereby restricted, except that no more than two dogs, or two cats, or a dog and a cat and two birds may be kept on any such lots provided that they are not kept, bred or maintained for any commercial purpose. Any dog or cat kept or harbored or maintained on any of the lots hereby restricted shall be spayed or neutered.

OUTBUILDINGS, FUEL TANK STORAGE, OUTSIDE ANTENNAS AND MISCELLANEOUS PROHIBITIONS:

Detached outbuilding will be allowed on any lot as long as it meets the minimum to maximum square footage allowed for detached buildings for single family dwelling lots under the zoning and building codes of the City of Paola, Miami County, Kansas, except that any such outbuilding shall be constructed of the same materials as the single family dwelling; have the same color as the single family dwelling, and the roof have the same color and style shingles as the single family dwelling on the lot.

No outside tank for the storage of oil or other fluids may be maintained on any of the lots above the surface of the ground except for small propane storage tanks used in outdoor cooking systems.

No radio or television antennas or large television "dish" receivers may be kept or maintained on any of the lots hereby restricted except within the confines of a dwelling unit erected

thereon. "Dish " receivers not exceeding eighteen inches in diameter may be used if discreetly placed as to avoid prominent view to neighboring properties and street traffic.

No permanent provisions shall be made on any lot for the raising of poultry or animals, or the housing of cows, horses or other livestock.

No trash, ashes or other refuse may be thrown or dumped on any lot in the subdivision.

No septic tanks may be installed on any lot; all dwellings shall be connected to the public sewer.

DURATION: All of the restrictions and covenants herein set forth shall continue and be binding upon the OWNER and upon its successors and assigns for a period of thirty (30) years from the date this instrument is filed for record in the office of the Register of Deeds of Miami County, Kansas, and shall automatically be extended thereafter for successive periods of ten (10) years, provided, however, that the owners of the legal title to the lots having more than fifty (50) per cent of the front footage of the lots shown on the recorded plat, may release all of the lots hereby restricted from any one or more of said restrictions and covenants, and may release any lot shown on said plat from any restrictions or covenants created by deed from the OWNER at the end of the first thirty (30) year period, or at the end of any successive ten (10) year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purpose and filing the same for record in the manner then required for the recording of land instruments, at least five (5) years prior to the expiration of the first thirty (30) year period, or at least five (5) years before the expiration of any ten (10) year period thereafter; and further provided that the owners of the legal title of the lots having more than seventy-five (75) percent of the front footage of the lots shown on this plat may, after fifteen (15) years from the date of this instrument, by executing and acknowledging an appropriate agreement and filing the same for record, as outlined above, release any one or more the restrictions or covenants as above mentioned.

RIGHT TO ENFORCE: The restrictions herein set forth shall run with the land and bind the OWNER, their successors and assigns, and all parties claiming by, through or under them shall be taken to hold, agree and covenant with the OWNER, their successors and assigns, and with each of them to conform to and observe said restrictions as to the use of said lots and the construction of improvements thereon, but no restrictions herein set forth shall be personally binding on any corporations, person or persons, except in respect to breaches committed during its, his or their

seizin of the title to said land, and the owner or owners of any of the above land shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the restrictions above set forth in addition to ordinary legal action for damages, and failure of the OWNER or owner or owners of any other lot or lots shown on this plat to enforce any of the restrictions herein set forth at the time of its violation shall, in no event, be deemed to be a waiver of a right to do so thereafter.

ADDITIONAL REAL ESTATE: The Owner unconditionally reserves the right to subject additional real estate to these restrictions at any time by documentation recorded in the office of the Register of Deeds, Miami County, Kansas.

CONFLICTS: Where the Declaration of Restrictions for Block 11, Heatherwood Estates Subdivision conflict with the ordinances and regulations of the City of Paola, the more restrictive regulation will prevail.

OWNER'S RIGHT TO ASSIGN: The OWNER by appropriate instrument, may assign or convey to any person, organization or corporation any or all of the rights, reservations easements and privileges herein reserved by the OWNER and upon such assignment or conveyance being made, their assigns or grantees may, at their option, exercise, transfer or assign such rights, reservations, easements and privileges, or any one or more of them, at any time or times, in the same way an manner as though directly reserved by them or it is this instrument.

PARTIAL INVALIDATION: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the OWNER has caused this instrument to be executed this 11th day of May, 2006.

MIAMI REALTY CO., INC.

BY: Harold Sevy
Harold Sevy, ^{Vice} President

ATTEST:

Clarence B. Prout
Secretary

By: Harold Sevy
Harold Sevy, President

Attest:

Breta M. Wadley (Debrick)
Secretary

OWNER

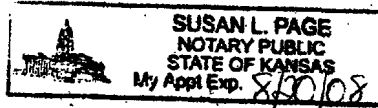
STATE OF KANSAS, MIAMI COUNTY, SS:

BE IT REMEMBERED, That on this day of June, 2006, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Harold Sevy, ^{vice} President of Miami Realty Co., Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, and Clarene Prothe, Secretary of said corporation, who are personally known to me to be such officers, and who are personally known to me to be the same persons who executed, as such officers, the within instrument of writing on behalf of said corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Notarial Seal the day and year last above mentioned.

Susan L. Page
Notary Public

My commission expires:



STATE OF KANSAS, MIAMI COUNTY, SS:

BE IT REMEMBERED, That on this 22nd day of June, 2006, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Harold Sevy, President of W. H. Debrick Co., Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, and Breta M. Wadley (Debrick)