



Sedgwick County
 Register of Deeds - Bill Meek
 DOC.#/FLM-PG: 29088258

Receipt #: 172749L
 Pages Recorded: 7
 Cashier Initials: LK

Recording Fee: \$32.00
 Authorized By:

Date Recorded: 9/2/2009 9:26:59 AM



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Grantor	KICK N DEVELOPMENT CORP
Grantee	ST ANDREWS PLACE ADD
Type of Document	RESTRICTIVE COVENANTS AMENDMENT
Recording Fees	\$32.00
Mtg Reg Tax	\$0.00
Total Amount	\$32.00
Return Address	TOOMEY PILGREEN, LLC
	229 E WILLIAM, STE 201
	WICHITA, KS 67202

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**THIRD AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF ST. ANDREW'S PLACE**

THIS THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Second Amendment" or "Amendment") is made and granted as of the 11th day of May, 2009, by Kick "N" Development Corp. (hereinafter referred to as "Owner", "Declarant" or "Developer"), a Kansas corporation, for itself, its successors, grantees and assigns.

WITNESSETH

WHEREAS, on the 6th day December, 2000, Declarant executed that certain Declaration of Covenants, Conditions, and Restrictions of St Andrew's Place ("Declaration") and caused the Declaration to be recorded on December 12, 2000 as Document No. 1936311, in the Office of the Sedgwick County Register of Deeds, on Film 2122, commencing at Page 0035, covering the following described real property, to wit:

ST. ANDREW'S PLACE
An Addition to Goddard
Sedgwick County, Kansas

such real property being hereinafter referred to as the "Property" or the "Land"; and

WHEREAS on the 25th day of March, 2004 Declarant amended the Declaration of Covenants, Conditions, and Restrictions by the adoption of the First Amendment to the same and caused the same to be recorded on August 20, 2004 in the office of the Sedgwick County Register of Deeds, at DOC#/FLM-PG 28600402 covering the hereinabove described real property; and

WHEREAS on the 4th day of September 2008, Declarant amended the Declaration of Covenants, Conditions and Restrictions by the adoption of the Second Amendment to the same and caused the same to be recorded on September 10, 2008 in the office of the Sedgwick County Register of Deeds, at DOC#/FLM-PG 29005882 covering the hereinabove described real property; and

WHEREAS, Section 16.01 of Article XVI of the Declaration authorizes Declarant, in its discretion, to amend the Declaration so long as Declarant owns at least one lot in the Property;

NOW, THEREFORE, Declarant does hereby amend said Declaration by the addition of Article XVII to read as follows:

DECLARATION OF RESTRICTIVE COVENANTS

The Declarant, Kick'N Development Corp., is the fee simple owner of the certain real property located in Sedgwick County, Kansas, as described on Exhibit A, which is attached hereto and incorporated herein by reference (the "Development"). Declarant has applied for and received Permit No. NWK-2007-00106 from the United States Army Corps of Engineers (the "Corps") to fill certain wetlands in waters of the United States (the "Permit"). In consideration of the issuance of the Permit and in compliance with the terms thereof, and for other good and valuable consideration, the Declarant hereby declares that the portion of the Development described in Exhibit B ("the Property") shall henceforth be subject to the following restrictive covenants (the "Restrictions"). As used herein, the term "Declarant" includes and shall be binding upon Kick'N Development Corp. and his/her/its successors, heir, and assigns.

1. **Purpose:** The purpose of these Restrictions is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition, and to retain such areas as suitable habitat for fish, plants, or wildlife. Those wetland or upland areas that are to be restored, enhanced, or created pursuant to the Permit shall be retained and maintained in the restored, enhanced, or created condition required by the Permit.

2. **Rights of Corps and Owners in the Development:** The following rights are conveyed to the Corps and any Owner of any parcel of real estate in the Development (the "Owner" or "Owners"):

- a. The right to take actions to preserve and protect the environmental value of the Property; and
- b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of these Restrictions, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;
- c. The right to enter upon and inspect the Property in a reasonable manner and at reasonable times to determine if the Declarant is complying with the covenants and prohibitions contained in these Restrictions; and
- d. The right to proceed at law or in equity to enforce the provisions of these Restrictions, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.

3. Prohibited Uses: Except for restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements, which are permitted, or required by the Permit, the following activities are prohibited on the Property:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground, or the construction or placing of structures below the ground that may impact the surface of the Property;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except as may be permitted by the Permit, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by the Corps,

d. Planting of nuisance, exotic, or non-native plants as listed by the State of Kansas;

e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, lean peat, gravel, soil, rock, or other material substance, except as may be permitted or required by the Permit;

f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that may affect the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep, or as otherwise may be permitted or required by the Permit;

g. Tilling, plowing, planting of crops, digging, mining, or other activities that are or may be detrimental to drainage, flood control, water conservation, water quality, erosion control, soil conservation, or fish and wildlife habitat preservation, including but not limited to ditching, diking, and fencing, except as permitted or required by the Permit;

h. The extraction of water from the Property or adjacent properties owned by Grantor, or the impoundment of water on the Property or on adjacent properties owned by Grantor, so as to affect the hydrology of the Property;

i. Acts or uses detrimental to the aforementioned retention and maintenance of land or water areas;

j. Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.

4. Reserved Rights: Declarant reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any Corps rule, criteria, permit, or the intent and purposes of these Restrictions.

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5. **Taxes:** Declarant shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** [See highlighted text in Para. 6 of Conservation Easement]. Declarant shall, at Declarant's sole expense, operate, maintain and keep up the Property consistent with the purpose of these Restrictions. Declarant shall remove from the property any nuisance, exotic, or non-native plants as listed by the State of Kansas and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Permit.

7. **Hazardous Waste:** Declarant covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Declarant shall be responsible for any and all necessary costs or remediation.

8. **Public Access:** No right of access by the general public to any portion of the Property is conveyed by these Restrictions, and Declarant further covenants not to hold any portion of the Property open to general use by the public except with the written permission of the Corps. As used herein, "the public" shall include the Owners, except for the limited purpose of compliance inspection pursuant to Paragraph 2, above.

9. **Liability:** Declarant shall continue to retain all liability for any injury or damage to the person or property of third parties that may occur on the Property arising from solely by reason of ownership of the Property. Neither Declarant, nor any person claiming by or through Declarant, should hold the Corps or any Owner liable for any damage or injury that may occur on the Property.

10. **Recording Requirements:** Declarant shall record these Restrictions in the official records of Sedgwick County, Kansas and shall re-record these Restrictions at any time the Corps may require to preserve its rights. Declarant shall pay all recording costs and taxes necessary at any time to record these Restrictions in the public records. Declarant shall thereafter insert the terms and restrictions of these Restrictions in any deed or other legal instrument by which Declarant divests himself/herself/itself of any interest in the Development, and shall provide a copy of these Restrictions to the new owner(s).

11. **Enforcement:** The terms and conditions of these Restrictions may be enforced in an action at law or equity by the Corps or any Owner against the Declarant or any other party violating or attempting to violate these Restrictions. Venue for any such action shall be in Sedgwick County, Kansas. Enforcement of these Restrictions shall be at the reasonable discretion of the Corps or Owner, and any forbearance on behalf of the Corps or Owner to exercise any right hereunder in the event of any breach by Declarant shall not be deemed or construed to be a waiver of rights. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of these Restrictions, including without limitation, the costs of suit and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if the Corps or any Owner shall prevail in an enforcement actions, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic

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condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Permits.

12. Effect of Restrictions: These Restrictions shall take effect immediately upon declaration and shall run with the land in perpetuity. These Restrictions shall be deemed to survive unity of title. Declarant shall take no action to rescind, revoke, or otherwise nullify these Restrictions.

13. Successors: The covenants, terms, conditions, and restrictions of these Restrictions shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

14. Notices: All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest. Any and all notices to the Declarant may be addressed to:

Kick N' Development Corp.
716 N. 119th Street West, #112
Wichita, Kansas 67235
ATTN: Paul Kelsey

15. Severability: If any provision of these Restrictions or the application thereof to any person or circumstances is found to be invalid, the remainder of the Restrictions shall not be affected thereby, as long as the purpose of these Restrictions is preserved.

16. Alteration or Revocation: These Restrictions may be amended, altered, released, canceled, or revoked only by written agreement between all then-current owners of all parcels of land located in the Development as shown by the public records of Sedgwick County, Kansas. No action shall be taken, however, without advance written approval by the Corps. Corps approval shall be by letter attached as an exhibit to the document amending, altering, canceling, or revoking the Restrictions, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice to the Corps, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment, alteration, release, cancellation, or revocation together with written Corps approval thereof shall then be filed in the public records of Sedgwick County, Kansas, within 30 days thereafter.

17. Controlling Law: The interpretation and performance of these Restrictions shall be governed by the laws of the state of Kansas.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants and Restrictions this 11th day of May, 2009.

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Signed in the presence of:

Kick N' Development Corp., Declarant

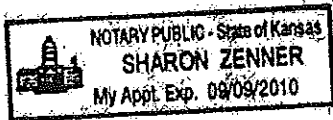
Don Klausner
Print Witness Name: Don Klausner

Paul Kelsey
By: Paul Kelsey, its President

STATE OF KANSAS
COUNTY OF SEDGWICK

The foregoing 3RD Amendment to The Declaration of Restrictive covenants was acknowledged before me this 11th day of May, 2009, by Paul Kelsey, as President of Kick N' Development Corp. who is personally known to me or has produced his Kansas drivers license as identification.

My Commission Expires:



Sharon Zenner
NOTARY PUBLIC