

**DECLARATION**  
**OF**  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
**OF THE ST. ANDREW'S PLACE**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** ("Covenants" or "Declaration") is made this 6<sup>th</sup> day of December, 2000, by Kick 'N' Development, Inc. (hereinafter referred to as "Declarant" or "Developer"), a Kansas corporation, for itself and its successors, grantees and assigns.

**WITNESSETH:**

**WHEREAS**, Declarant is the owner of 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**, Declarant deems it desirable to impose a general plan for the improvement and development of the Property and to adopt and establish covenants, conditions and restrictions upon the Property and each and every Lot and portion thereof, and upon the use, occupancy and enjoyment of the Property, all for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property; and

**WHEREAS**, The St. Andrew's Place Homeowners Association, Inc., a non-profit association formed hereby, will be incorporated under the laws of the State of Kansas for the purpose of exercising the powers and functions aforesaid.

**NOW, THEREFORE**, Declarant does hereby subject all of the Property to the covenants, conditions, restrictions, assessments and limitations set forth and contained in this Declaration, hereby specifying and declaring that this Declaration shall constitute covenants running with the Land and shall be binding on Declarant, its successors, grantees and assigns, and on all subsequent owners of all or any part of the Property, together with their respective grantees, heirs, executors, administrators, devisees, mortgagees, successors or assigns.

**ARTICLE I**

**DEFINITION OF TERMS**

The following terms used in these covenants, conditions and restrictions shall be applicable to this Declaration and are defined as follows:

1.01. "Association" shall mean and refer to ST. ANDREW'S PLACE HOMEOWNERS

3800

*[Handwritten signature/initials]*

ASSOCIATION, a non-profit association, to be incorporated under the laws of the State of Kansas, its successors and assigns.

1.02. "Builder" shall mean any person or entity owning a Lot in the Development for the purposes of construction thereon a Dwelling for sale to a third party.

1.03. "Building Site" shall mean any Lot or two or more contiguous Lots owned by a common Owner. An Owner may own a fraction of one Lot only if said fractional Lot is contiguous to one or more full Lots. All such contiguous Lots and fractional Lots owned by a common Owner shall be considered one building site.

1.04. "Common Area" shall mean any portion of the Property and all Improvements or Structures located thereon designated by the Declarant or the Association for the common use and enjoyment of the Owners, specifically including all areas designated as Reserve or Common areas on the recorded plat for the Property or on any plat recorded in connection with any property added by Declarant in the manner hereinafter provided. The Common Areas are hereby conveyed to and shall be owned by the Association.

1.05. "Declarant" or "Developer" shall mean and refer to Kick 'N' Development, Inc., its successors and assigns.

1.06. "Declaration" or "Covenants" shall mean this instrument and all attachments and amendments thereto.

1.07. "Development" shall mean the Property.

1.08. "Lot" shall mean and refer to each Lot as platted on the plat of ST. ANDREW'S PLACE, an Addition to Goddard, Sedgwick County, Kansas.

1.09. "Member" shall mean and refer to every person or entity that is the Owner of all or any portion of a Lot and thereby holds membership in the Association.

1.10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or Lots, including contract sellers, but excluding persons or entities having an interest merely as security for the performance of an obligation.

1.11. "Patio Home Lot" shall mean any Lot or area in the development platted or designated to authorize erection thereon of a Structure commonly known as a "Patio Home."

1.12. "Property" or "Land" shall mean and refer to ST. ANDREW'S PLACE, an Addition to Goddard, Sedgwick County, Kansas, as well as any property added to the Development in the manner hereinafter provided.

1.13. "Structure" or "Improvement" shall mean and refer to any thing or device the placement of which upon any Lot or Building Site may affect the appearance of such Lot including,

by way of illustration and not limitation, any building, garage, porch, shed, greenhouse, bathhouse, covered or uncovered patio, swimming pool, tennis court, clothes line, radio or television antenna, satellite dish, fence, curbing, paving, wall, hedge, shrubbery, trees, signboard, or any temporary or permanent improvement to any Lot. The term "Structure" or "Improvement" shall also mean any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface water from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot, and any change in the grade of any Lot from that existing at the time of purchase of the Lot by each Owner.

1.14. "Single-Family Residential Dwelling" or "Single-Family Dwelling" or "Dwelling" or "Residence" shall mean a Structure or Improvement erected and maintained in conformance with these Covenants for private residential purposes and designed for occupancy by a single family, including Patio Homes. It shall not mean or refer to any apartment, flat, duplex or other multi-family dwelling even though intended for residential purposes.

## ARTICLE II

### MEMBERSHIP IN THE ASSOCIATION

2.01. The Owners of all the Property together with the Owners of any other property that may from time to time be added to the Development in the manner hereinafter provided, shall be Members of the Association.

2.03. At a time within the sole discretion of Declarant, the Association will be incorporated under the laws of the State of Kansas as a corporation not for profit.

2.04. Membership in the Association shall be limited to the Developer or Owners (including Builders) of property within the boundaries of the Development as it exists from time to time, as hereinafter set forth.

## ARTICLE III

### DEVELOPER ACTING AS AND FOR ASSOCIATION

3.01. Until the Association is incorporated and thereafter until relinquished as set forth below, Developer shall have the right at its sole and exclusive option to perform the duties and assume the obligations of, levy and collect the assessments for, and otherwise exercise the powers herein given to, the Association, in the same way and manner as though all of such powers and duties were hereby given directly to the Developer.

3.02. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of the Developer and its relinquishment in writing of all or any portion of such rights.

3.03. The Developer may, by appropriate written instrument made expressly for that

purpose, assign or convey to a third party or the Association any portion of or all of the rights, reservations and privileges reserved by it in this Article III and upon such assignment or conveyance being made, such third party or the Association shall exercise and assume such rights assigned in writing by the Developer.

**ARTICLE IV**

**VOTING RIGHTS**

4.01. The Association shall have three (3) classes of voting membership, as follows:

Class A. Each Owner of a Lot in the Development (other than a Class B or Class C Member) shall be a Class A Member of the Association. Each Class A Member shall be entitled to one vote for each Lot owned by him, her or it in fee simple title; provided, however, that until a residence is completed and occupied in good faith on a lot, the Developer shall be entitled to the vote of the Owner, and purchase of a lot subject to this Declaration shall constitute the purchaser's proxy to Developer for the aforesaid purpose. When more than one person holds such interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

Class B. The Developer shall be a Class B member. The Developer shall have the right to appoint a majority of the Board of Directors of the Association and shall have the right to approve and the power to veto any and all actions of the Association. Class B membership of the Developer shall continue until Developer and each Builder own no land in the Development (including lands added as set forth below) or until Developer relinquishes its Class B membership, whichever first occurs. For purposes of voting requirements herein, the Class B Member shall have twenty (20) votes for each lot owned by it, in addition to the right to approve and the power to veto set forth above.

Class C. All "Builders" or "Contractors" who own a Lot in the Development for the purpose of constructing a Residence thereon solely for sale to the public shall be a Class C Member. For purposes of voting requirements herein, each Class C Member shall have one voting right for each Lot owned by such Class C Member.

4.02. The voting rights of a Class A Member shall be suspended for any period during which any assessment described in this Declaration, including interest and fees, remains unpaid.

At any regular or special meeting of the Association, Members may cast their vote in person or by proxy.

Except as hereinabove provided, the Association shall be the sole judge of the qualification of its members and their rights to participate in its meetings and proceedings.

Unless the context clearly indicates to the contrary, decisions by the Association described



herein shall require approval of the requisite percentage of Class A and Class B votes combined, and not separate requisite percentages of each Class.

4.03. Notwithstanding the foregoing, the provisions of this Article IV shall be subject and subordinate to the provisions of Article III herein.

**ARTICLE V**

**LAND ENTITLED TO BENEFITS**

5.01. No land shall be entitled to any of the benefits, improvements, or services provided by the Association unless the owner thereof shall have subjected his, her, or its land to the terms of this Declaration and to the assessments herein provided for.

5.02. For purposes hereof, accepting title to land within the Development after the recording of this Declaration shall satisfy the foregoing requirements.

**ARTICLE VI**

**USE OF COMMON AREAS**

6.01. The Owners of land within the Development shall have the exclusive right to the use of all Common Areas within the Development as it from time to time exists.

6.02. The Association shall have the right and the power to charge reasonable fees for the use of any recreational facility located within a Common Area and to make reasonable rules and regulations which shall govern the use of the Common Areas and implement the terms of this Declaration as the context requires.

**ARTICLE VII**

**USE, OCCUPANCY AND CONDUCT RESTRICTIONS**

7.01. Purpose. The covenants, conditions, restrictions, reservations, and easements hereby declared are designed: to insure the most appropriate development and improvement of the Property and each Lot therein; to protect the owners of Lots against uses tending to depreciate or lower the value of the Property or any portion thereof; to prevent the erection of poorly designed or proportioned Improvements in the Property; to insure that all Improvements are build with proper and suitable materials; to encourage and insure the erection of attractive Single-Family Residential Dwellings in the Property, appropriately located on each Building Site; to provide and maintain proper building setback from streets and adequate free spaces between Structures and Improvements; and generally to provide a high quality single-family residential development on the Property.

7.02. Use of the Property: Compliance with Plat. No Structure or Improvement shall be erected, altered, placed, or permitted to remain on any building site other than a Single-Family Residential Dwelling designed for private use and occupancy by a single-family, including Patio Homes, along with a private garage and other Structures or Improvements incidental to single-family residential use. No portion of the Property shall be used for other than single-family residential use except sales and development activities by Declarant and his successors, assigns, agents, employees, representatives, and contractors. Each Structure and Improvement shall comply with the minimum front, back and side setback requirements and all other requirements as shown on the recorded plat of the Property, or as otherwise specified by Declarant and shall comply with the requirements of any applicable law, code, ordinance, rule or regulation.

7.03. Minimum Size of Dwellings. Each Single-Family Residential Dwelling, including Patio Homes, constructed upon a Building Site shall conform to such square footage requirements as are determined from time to time by the Association.

7.04. Garage. Each Single-Family Residential Dwelling shall include an attached garage suitable for two or more automobiles.

7.05. Building Sites. No Lot shall be divided into more than one Building Site, but two or more contiguous full Lots or at least one full Lot along with a contiguous fractional Lot may be used as one Building Site for one Dwelling. No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise, except by Declarant or with Declarant's prior written approval and all necessary governmental approval.

7.06. Landscaping. Upon completion of a dwelling or as soon as practicable and appropriate thereafter, the Owner shall plant or sod a lawn on the entire Building Site, plant a minimum of two (2) trees on such Lot with a minimum caliper of two (2) inches at the time of planting, and plant at least four (4) perennial shrubs or bushes on such Building Site; provided, however, no hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct site lines at any corner. Trees, shrubs and other plantings that die shall be promptly removed by the Owner from the Property. No tree shall be removed from any Lot without the prior written consent and authorization of Declarant.

7.07. Maintenance. Each owner (other than Declarant who shall have only the obligation to mow all unsold Lots owned by Declarant) shall keep and maintain all Lots and all Improvements therein or thereon, in good order and repair including, by way of illustration and not by way of limitation, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees, shrubbery and plantings, and the painting (or other appropriate external care) of all Structures and Improvements, all in a manner and with such frequency as is consistent with good property management in relation to the high quality residential neighborhood to be developed on the Property.

7.08. Excavations. No excavations, except such as are necessary for the construction of a Dwelling or Improvements, shall be permitted on any Lot without the prior written consent of

Declarant.

7.09. Prohibited Improvements and Uses. No trailer, trailer house, mobile home, modular home, used home, secondhand home or previously constructed building or outbuilding may be moved, placed, parked or used, upon the Property nor permitted to remain upon the Property. No garage, tent, shack, temporary structure, outbuilding or other Improvement, except a Dwelling, may be used at any time for human habitation nor converted into apartments, rental or living quarters. No external antennas, satellite dishes (except digital satellite system dishes not to exceed 30 inches in radius which are permitted), permanent clothes lines, poles, towers or wires shall be erected or maintained on the Property. All utility and phone lines shall be underground.

7.10. Trash Storage. No trash, ashes, dirt, rock or other refuse may be thrown, dumped or maintained on any Lot or Building Site in the Property. All trash containers must be stored out of sight except on days when trash pick up is scheduled. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence or as is appropriate to and during construction of Improvements or Structures on the Property in accordance with this Declaration.

7.11. Animals. No livestock, chickens, fowl or other animal except the usual and ordinary number of family pets may be kept or maintained on the Property and no commercial or agricultural business enterprises, including breeding, involving the use of birds, animals, reptiles or insects may be conducted on the Property.

7.12. Signs. No sign, advertisement, billboard or other advertising device of any nature may be erected, placed or maintained on any Lot in the Property without Declarant's prior written consent; provided, however, Declarant or its representatives, agents, employees and contractors may erect signs advertising Lots and Dwellings in the Development for sale and promoting the Property during the development thereof.

7.13. Model Homes and Real Estate Offices. Notwithstanding any other provision herein to the contrary, any Lot, Building Site or Dwelling owned by Declarant or others so authorized by Declarant may be used for a model home or for a real estate sales office.

7.14. Home Professions and Businesses. No retail, wholesale, manufacturing or repair business shall be conducted or permitted on any Lot or in any Residence. Structure or Improvement erected thereon except as authorized in Section 7.13.

7.15. Contractors. All Dwellings, Improvements and Structures constructed upon a Lot or Building Site shall be constructed by a contractor licensed by the City of Wichita and expressly approved in writing by Declarant prior to or at the time of approval of plans therefor by Declarant.

7.16. Vehicles. No automobile, truck, motorcycle, boat, trailer of any type, camper, recreational vehicle or any other vehicle of any type or description may be stored or permanently, continually or regularly parked in or on any street or in the open on any Lot or driveway; provided, however, boats may be continually or regularly parked in any area enclosed by a fence of at least

six feet (6') in height and constructed in accordance with the requirements of this Declaration. Vehicle repairs other than ordinary light maintenance are not permitted on the Property.

7.17. Pipes. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No portion of the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, nor shall any other Structure or activity relating thereto be permitted or allowed to remain in or on any portion of the Property.

7.18. Fencing--General. No chain link or wire fences shall be permitted on the Property, except for use specifically for a dog run or kennel which shall be located in the rear yard and in an area enclosed by a fence which conceals such dog run or kennel from the view of all other Owners and which shall be constructed, placed and maintained in accordance with these Covenants, including architectural control. No split rail fences shall be allowed.

Any fence erected or maintained on any part of the Property shall be constructed, placed and maintained in accordance with these Covenants, including any rules, regulations and requirements established from time to time and at any time by architectural control, and: shall be at least four (4) inches above ground level along its entire length, except posts; shall be no less than six (6) feet nor more than six and one-half (6-1/2) feet in height above ground level along its entire length; and shall provide for adequate drainage under such fence along its entire length.

7.19. Fencing-Lakeside Lots. Notwithstanding any other provisions herein to the contrary, no fencing shall be allowed on a Lot adjacent to a lake or other body of water in, on, or adjacent to the Property ("Lakeside Lots") which blocks the lake view of any Lot in the Property. Wrought iron fencing may be erected and maintained on a Lakeside Lot but shall be erected and maintained so as to minimize as much as possible the impairment of the lake view of any other Lot, shall be otherwise constructed in accordance with the provisions of this Declaration (including paragraph 7.18 and Article XI), and shall be constructed in accordance with the rules, regulations and requirements imposed from time to time and at any time by Developer or the Association; provided, however, no such rule, regulation or requirement shall be applied retroactively to any fence erected in compliance with this Declaration and any then effective rule, regulation or requirement.

7.20. Roof Construction. Roofs shall be constructed with composition shingles, weathered wood or similar in color.

7.21. Use of Lakes. No motorized craft of any type shall be used or maintained on the lakes in the Property. Use of the lakes shall otherwise be controlled by rules and regulations adopted from time to time and at any time by the Developer or the Association.

7.22. Exterior Color Schemes. All exterior color schemes shall be in neutral colors and at all times subject to the prior approval of Developer and or architectural control. Pre-approved exterior colors and color schemes may be established from time to time and at any time by Developer and may be maintained at Developer's sales office in the Property. All exterior colors



and color schemes not so pre-approved must be authorized and approved by the Developer or architectural control in accordance with the terms and provisions of Article XI.

7.23. Nuisances; Noxious or Dangerous and Offensive Activities Prohibited. Each Owner and occupant shall obey and comply with all applicable laws, ordinances, rules and regulations now in effect or hereafter enacted and all terms and provisions now or hereafter established by this Declaration. No owner or occupant shall do or allow to be done any act which causes or threatens to cause any damage or encroachment to the Residence or Lot of any Owner or the Declarant. No noxious, dangerous or offensive activity or thing shall be carried on or permitted on the Property, nor shall anything be done which may be or may become an annoyance or nuisance to any other Owner in the Property or to the neighborhood.

7.24. Restrictions Not Exclusive. The covenants, conditions and restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by applicable zoning laws, or the laws, rules or restrictions imposed by any deed or the recorded plat on the Property. In the event of any conflict, the most restrictive provision of any such law, rule, regulation, deed, plat or this Declaration shall be taken to govern and control.

## ARTICLE VIII

### THE ASSOCIATION

#### 8.01. Powers and Duties.

(a) The Association shall have the rights and powers as set forth herein and in its Articles of Incorporation and By-Laws, together with its general powers as a nonprofit association or corporation, and it shall perform each and every duty required of it by this Declaration.

(b) The Association shall own, maintain, improve, landscape, mow and keep clean the Common Areas.

(c) The Association may maintain such insurance on the Common Areas and all Improvements thereon as deemed necessary and advisable.

(d) The Association shall have the right to create and establish reserves for the repair, restoration, or replacement of any Improvement it has the duty to repair, restore or replace hereunder.

(e) The Association, through its Board of Directors shall have the right to adopt such rules and regulations as it may deem advisable for the maintenance, use, conservation, and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and occupants of Lots in the Property.

8.02. Operations and Expenses. The Association shall establish such committees as it deems appropriate or advisable may engage a manager, secretaries, engineers, auditors, accountants, legal counsel, and other employees or consultants as may be reasonably necessary for the discharge

of its duties hereunder. The expenses of committees, the salaries of a manager and other employees and the fees of consultants shall be established and paid for by the Association. The Association shall pay for all other expenses necessary or incidental to the conduct or carrying on of its business.

8.03. Enforcement. The Association may engage a management firm and turn over to such firm any duties required by its Articles of Incorporation and By-Laws and this Declaration. In addition to any and all other provisions concerning enforcement set forth herein, the Association shall have the duty to enforce each and every provision of this Declaration, including the duty to commence and maintain an action to enjoin any breach or threatened breach of any of the provisions hereof, and to pay all costs of any such action or other enforcement procedure.

8.04. Declarant's Rights. The terms and provisions of this Article shall be subject and subordinate to the rights of Declarant as set forth in Article III of this Declaration.

## ARTICLE IX

### METHOD OF PROVIDING GENERAL AND SPECIAL FUNDS

9.01. For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the Improvements and render the services herein provided for, each Lot within the Development owned by a Class A Member shall be subject to an annual general fund assessment which may be levied by the Association from year to year, which assessment shall be paid to the Association annually or at such other times as an Association may determine in advance. Anything to the contrary herein notwithstanding, the Developer, in its sole discretion, shall fix the amount of annual assessments for the Association, for so long as Developer owns land within the Development (including land added to the Development). Thereafter, the Association shall from year to year fix and determine the total amount required in its general fund and may levy and collect an annual assessment for each Lot owned by a Class A Member. Assessments shall commence upon acceptance of title to a Lot. The assessment for the year in which the title is transferred shall be determined on the basis of date of closing and prorated on a 365-day year basis.

9.02. The annual assessments upon each Lot as aforesaid may be increased by an Association on all the Lots of its Members by an amount not exceeding fifty percent (50%) of the preceding year annual assessment which the Association may levy against such Lot and collect from year to year; provided, that the preceding year annual assessment upon each Lot as aforesaid may be increased on all the Lots of Members by an amount not exceeding one hundred percent (100%) of the previous annual assessment applicable to said Lot, provided that at a meeting of the Members specially called for that purpose, prior to the date on which the assessment is levied for the year for which such increase is proposed, seventy-five percent (75%) of the votes of the Class A members present in person or by proxy at such meeting may authorize such an increase by an affirmative vote therefor. The Association shall be empowered to levy and collect special assessments for capital improvements or repairs in such amounts as the Association deems reasonably necessary.

9.03. Unless the increases provided for in paragraph 9.02 of this Article IX are specifically limited by the resolutions in which they are contained to be for a specified period, they shall

continue to be effective until rescinded by the Association, at a meeting specially called for such purpose, by an affirmative vote of seventy-five percent (75%) of the Members present in person or by proxy, or by action taken under the terms of paragraph 9.05 of this Article IX and in either such event the rescission shall be effective commencing on the first day of the next succeeding year.

9.04. Whenever the Association may deem it advisable to submit to the members a proposal under paragraph 9.02 of this Article IX for increasing or decreasing the amount of the annual assessments, it shall notify the Members of the Association by mailing to such Members at the last known address, with United States postage prepaid thereon, a notice of such meeting, giving the time and place at which it is to be held and the fact that an increase or decrease in the amount of the annual assessment is to be voted upon at such meeting. Such notice must be deposited in the United States mail not less than fifteen (15) days prior to the date of such special meeting.

9.05. The first general assessment hereunder for each Association shall be for the calendar year beginning January 1, 1999, and shall be due and payable thirty (30) days after such assessment; future assessments shall be due and payable on January 1st of each year thereafter unless otherwise determined by the Association. Within fifteen (15) days from the levying of each assessment, the Association shall notify all Owners of assessable Lots who are Class A Members of the Association of the amount of such assessment. Failure of the Association to levy the assessment prior to January 1st of each year for the next succeeding fiscal year beginning on January 1st shall not invalidate any such assessment subsequently made for that particular year; nor shall failure to levy an assessment for any one year affect the right of an Association to do so for any subsequent year. When the assessment is levied subsequent to the 1st day of December which precedes such fiscal year then such assessment shall become due and payable not later than thirty (30) days from the date of levying the assessment. Prior to the first assessment hereinabove provided for, if the Developer shall deem it necessary for the purpose of carrying out the terms of this Declaration, it shall have the right to make a partial assessment within the limits herein provided for and on a prorated basis. The Association may elect to permit collections in monthly, quarterly or semi-annual payments in lieu of the annual payments provided for herein.

9.06. A written or printed notice, deposited in the United States Post Office, with postage prepaid thereon, and addressed to the respective Members at the last address listed with the Association, shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose of this Declaration where notices are required, unless otherwise provided herein.

9.07. The Owner of each Lot subject to an annual assessment or assessments as herein provided shall by acceptance of a Deed to such Lot be taken to have agreed and does by these presents agree to pay to the Association all assessments placed against such Lot in accordance herewith and the Association is hereby granted the power to proceed against such Owner personally for the collection of said assessments, said right to be in addition to and not to be construed as a limitation upon remedies and rights of the Association otherwise herein granted.

9.08. The Association shall be empowered to levy and collect an initiation fee in an amount not greater than one-half of the then yearly general assessment from the first purchaser of each Lot.

**ARTICLE X****LIEN ON REAL ESTATE**

10.01. The assessments provided for herein shall become a lien on the real estate against which it can be levied as soon as it is due and payable as above set forth; provided, however, that such lien shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. In the event of the failure of any Owner to pay assessments within thirty (30) days from the date same are levied, then such assessments, from the thirtieth (30th) day after levy shall bear interest at the maximum rate of interest then allowed in Kansas on judgments.

10.02. Within thirty (30) days from the date of levying the assessments for the calendar year during which and for which the assessments are levied, the assessments shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate, in proceedings in any court in Sedgwick County, Kansas, having jurisdiction of suits for the enforcement of such liens. It shall be the duty of the Association to bring suits to enforce such liens before the expiration thereof. The Association may, in its discretion file certificates of nonpayment of assessments in the office of the Register of Deeds whenever any such assessments are delinquent. For each certificate so filed, the Association shall be entitled to collect from the Owner or Owners of the property described therein a fee of the greater of One Hundred Fifty Dollars (\$150.00) or one year's general assessment as described in Article IX above, which fee is hereby declared to be a lien upon the real estate so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. Such fee shall be collectable in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

10.03. Such liens shall continue for a period of five (5) years from the date of delinquency or the maximum time allowed by law, whichever is longer, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing same.

**ARTICLE XI****ARCHITECTURAL CONTROL**

11.01. Architectural Control Function. In order to assure the development and continued maintenance and operation of the Property as a first-class residential neighborhood, no Structure or Improvement shall be commenced, erected, placed, maintained, moved onto or permitted to remain on any Lot, nor shall any existing Structure or Improvement upon any Lot be changed or altered in any manner, nor shall any new use be commenced on any Lot, unless plans and specifications (including a site plan and a grade plan and drainage plan) therefor shall have been submitted to and approved in writing by Declarant, who shall have complete control of all such matters and may



approve or withhold approval on any basis deemed proper in Declarant's sole and absolute discretion.

11.02. Required Information. Such plans, specifications, site plan, grade plan, and drainage plan shall be in such form and shall contain such information as may be required by Declarant in Declarant's sole discretion. Declarant shall have the absolute right at any time and from time to time to delegate such architectural control function to any other person(s) or entity(ies).

11.03. No Liability. Neither Declarant, nor any successor, assign, agent, employee, representative or other person or entity to whom such architectural control function has been delegated by Declarant, shall be liable to any Owner or other person or other entity for any claims, damages or causes of action arising from or in any way out of performance or nonperformance of the architectural control function including, by way of illustration and not limitation, the failure, refusal or neglect to approve any plans and specifications submitted. Any architectural control decision shall be final and conclusive.

11.04. Noncompliance. If any Improvement or Structure shall be altered, erected, placed or maintained upon any Lot, or any use or new use commenced or maintained on any Lot, without architectural control approval or otherwise than in accordance with the plans and specifications approved pursuant to the provisions of this Article, such alteration, erection, maintenance, use or new use shall be deemed to have been undertaken in violation of these Covenants and without the approval required herein, and upon written notice, any such Improvement or Structure so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or realtered, and any such use or new use shall be terminated so as to extinguish such violation. If ten days after the notice of such violation the Owner of the Lot upon which such violation(s) exist shall not have taken reasonable steps toward the removal or termination of the same, Declarant or any other Owner shall have the right to take such steps as may be necessary to extinguish such violation.

11.05. Delegation. At such time as Developer owns no Lots in the Property or at such earlier time as the Developer delegates such function to the Association, the Association shall thereafter exercise and assume the architectural control function through its governing body or such other committee as shall be established pursuant to its powers as herein granted.

## ARTICLE XII

### MAINTENANCE OF WALL EASEMENT

12.01. Applicability. This Article XII shall be applicable to and binding upon Lots 1 through 5 of Block A and Lot 1 of Block D of the Property and any other Lot in the Property on which a wall easement is located (hereinafter referred to as "Wall Easement Lots").

12.02. Additional Covenants and Conditions. The following additional covenants and conditions are hereby imposed on the owners of the Wall Easement Lots and their successors, assigns, grantees, heirs, and personal representatives.

- (1) The Owners of Wall Easement Lots shall not alter nor allow any alteration to the area included within any wall easement and any Structures or Improvements located in any wall easement shall be subject to removal, damage, or destruction without any recourse to the Owner thereof in damages or otherwise; and
- (2) The Owner of a Wall Easement Lot shall mow the grass and maintain the landscaping in the wall easement and the Association shall maintain in a good state of maintenance and repair all Structures and Improvements located in the wall easement area located on each Owner's Lot or located adjacent to any Lot if such wall easement is not located in whole or in part within the boundaries of any Lot in the Property. The Owner of each Lot in the Development grants the Association an easement to enter onto each Lot for the purposes of repair and maintenance of such Structures or Improvements.

### ARTICLE XIII

#### ENFORCEMENT

13.01. Right to Enforce. Declarant, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants conditions and restrictions now or hereafter imposed by the provisions of this Declaration.

13.02. Waiver. Failure by Declarant, the Association, or any Owner to enforce any covenant condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

13.03. Attorneys' Fees and Costs. The Declarant, the Association, or any Owner shall have the right to include in such claim for relief a reasonable sum for attorneys' fees and all other expenses reasonably incurred in enforcing the rights, terms, provisions, covenants, conditions and restrictions hereunder.

### ARTICLE XIV

#### RIGHTS AND POWERS OF DECLARANT

14.01. Assignment and Delegation. Declarant shall have the absolute right and power to assign and/or delegate, at any time and from time to time, all or any part of any of the rights, powers and authority contained in this Declaration.

14.02. Addition of Other Land. Declarant, at its discretion, shall have the right from time to time to add additional land to the Development including but not limited to, the right to plat additional land which may include Patio Homes, provided that:

- (a) Declarant owns a Lot or Lots in the Development; and

(b) the land so added to the Development shall at the time of addition be subject to and bound by all of the terms of this Declaration and any amendments thereto; and

(c) Declarant executes and records a document with the office of the Register of Deeds of Sedgwick County, Kansas, describing the land added and subjecting the same to the terms of this Declaration.

14.03. Removal of Land. Declarant shall have the absolute right at any time and from time to time to waive or modify any or all of the covenants, conditions and restrictions of this Declaration as to any undeveloped and unimproved Lot or Lots owned by Declarant by executing and filing a document of record with the office of the Register of Deeds of Sedgwick County, Kansas describing such waiver or modification and describing the Lot or Lots to which such waiver or modification applies.

14.04. Development Activities. Declarant specifically reserves the right to carry on Declarant's business in the Development so long as Declarant owns land in the Development or new Dwellings or Improvements are being constructed in the Property, including by way of illustration and not limitation, maintaining sales offices, model homes, business offices and other facilities necessary or convenient for the business of Declarant.

14.05. Easements in Favor of Declarant. Declarant specifically reserves to itself, its successors and assigns, a perpetual, nonexclusive easement and right-of-way over the Common Areas for the purposes of constructing, maintaining, repairing, replacing and rebuilding pipes, drains, mains and/or utilities for the purpose of conveying gas, water and sewage through the Property, together with the right to excavate and level ditches and/or trenches for the location of such pipes, drains, mains and utilities.

## ARTICLE XV

### COVENANTS RUNNING WITH THE LAND

The covenants, conditions and restrictions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon and run with the Property and shall be binding upon all Owners of any part or portion thereof, along with all successors, assigns, grantees or purchasers of any part or portion of the Land, including under any deed, grant, escrow, contract of sale, device, or lease.

## ARTICLE XVI

### AMENDMENT

16.01. Amendment by Declarant. Until such time as Declarant owns no Lot in the Property, Declarant shall have the absolute right to amend this Declaration by recording a written Amendment in the office of the Register of Deeds of Sedgwick County, Kansas; provided, however, that no such

Amendment shall materially affect any rights of the then existing mortgage holders.

16.02. Other Amendment. After Declarant owns no Lot in the Property, these Covenants may be amended only upon the affirmative vote of seventy-five percent (75%) of the votes of Class A Members of the Association, in person or by proxy at a meeting called for such purpose, evidenced by an Amendment to the Declaration duly executed and acknowledged by such Class A members and recorded in the office of the Register of Deeds of Sedgewick County, Kansas; provided, however, that the Developer retains the right to amend this Declaration, in its sole discretion as it may relate to any land added pursuant to the provisions hereof.

**ARTICLE XVII**

**MISCELLANEOUS**

17.01. Term. The covenants, conditions and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant, the Owner of any Lot and their respective legal representatives, heirs, successors, assigns and grantees, for a term of thirty-five (35) years from the date of recording hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the Owners of a majority of the Lots by number according to the recorded plat and any amendments thereto, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions in whole or in part.

17.02. Severability. All of the restrictions, conditions and covenants contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such restrictions, conditions or covenants, or any part thereof, is invalid or for any reason becomes unenforceable, no other restriction, condition, covenant, reservation, or any part thereof, shall be affected or impaired.

17.03. Construction and Interpretation. In constructing, interpreting and applying the provisions of this Declaration, they shall be held to be minimum requirements adopted for the promotion of the health, safety, comfort, convenience and general welfare of the Owners of the Property. It is not the intent of this Declaration to interfere with any provisions of any law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to law relating to the use of buildings or premises; nor is it the intention of this Declaration to interfere with or abrogate or annul easements, covenants, or other agreements between parties; provided, however, that where this Declaration imposes a greater restriction upon the use or occupancy of any Lot or Building Site or upon the construction of buildings or Structures, or in connection with any other matters that are imposed or required by such provisions of law or ordinances or by such rules, regulations or permits, or by such covenants, easements and agreements, then in that case the provisions of this Declaration shall control.

17.04. Waiver and Exceptions. The failure by Declarant or of any Owner to enforce any of the restrictions, conditions, covenants or reservations to which the Property or any part thereof is subject, shall in no event be deemed a waiver of the right to do so thereafter or to enforce any other



restriction, condition, covenant or reservation.

17.05. Mortgage Protection Clause. No breach of the covenants, conditions or restrictions herein contained nor the enforcement of any provisions herein, shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of these covenants, conditions and restrictions shall be binding upon and be effective against any Owner whose title is derived through foreclosure sale, or deed in lieu thereof.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

KICK 'N' DEVELOPMENT, INC.

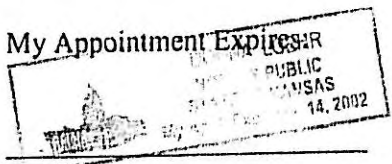
By: Paul Kelsey  
Paul Kelsey, as its President

STATE OF KANSAS     )  
                                  ) ss:  
SEDGWICK COUNTY    )

BE IT REMEMBERED that on this 10<sup>th</sup> day of December <sup>2000</sup> ~~1999~~, before me the undersigned, a Notary Public in and for the County and State aforesaid, came Paul Kelsey, as President of, and on behalf of Kick 'N' Development, Inc. 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 to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Wichita, Kansas, on the day, month and year first above written.

Wanda Rucker  
Notary Public



Sharon Langley  
Deputy

STATE OF KANSAS } ss  
SEDGWICK COUNTY }

DEC 12 9 33 AM '00

BILL MEEK  
REGISTER OF DEEDS