

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS OF THE NORTH MEADOW  
HOME OWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF **NORTH MEADOW HOME OWNERS ASSOCIATION** is made this 20<sup>th</sup> day of March, 1995, by Builders, Inc., a Kansas corporation ("Developer").

**ARTICLE I.  
DECLARATION**

**1.1 Declaration.** Developer hereby declares that the Property hereinafter defined shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, uses and obligations, all of which are declared and agreed to be for the protection of the value of the Property and for the benefit of persons acquiring interests therein, shall be deemed to run with the land and shall be a benefit and a burden to any persons acquiring an interest in the Property, their grantees, successors, heirs, legal representatives and assigns.

**ARTICLE II.  
PURPOSE AND PROPERTY AFFECTED**

**2.1 General Purpose.** This Declaration is established to provide that the Property shall be developed and maintained as a residential area of a high quality, value, desirability and attractiveness.

**2.2 Property Affected.** The Property referred to herein which is hereby made subject to the provisions of this Declaration is described on Exhibit "A" attached hereto.

## **ARTICLE III.**

### **DEFINITIONS**

**3.1 Architectural Control Committee.** "Architectural Control Committee" shall mean the Architectural Control Committee appointed as provided in Article VI of this Declaration.

**3.2 Association.** "Association" shall mean the North Meadow Homeowners' Association, a Kansas non-profit corporation.

**3.3 Board.** "Board" shall mean the Board of Directors of the Association.

**3.4 Change in the Existing State of Property.** "Change in the Existing State of Property" shall mean and include, without limitation: (a) the construction, installation, alteration or expansion of any temporary or permanent building, structure or other improvement, including but not limited to utility facilities, fencing or recreational equipment; (b) the destruction by voluntary action or the abandonment of any building, structure or other improvement; (c) the excavation, filling or similar disturbance of the surface of the land; and (d) any change or alteration, including, without limitations any change of color (other than those colors approved from time to time by the applicable standards of the Architectural Control Committee), texture or exterior appearance, of any previously approved Change in the Existing State of Property.

**3.5 Common Areas.** "Common Areas" shall mean all real property and any improvements now or hereafter located thereon, which is dedicated for the common use and enjoyment of its Members as described in Article IX hereof.

**3.6 Declarant.** "Declarant" shall mean the Developer and its successors and assigns. The Association hereinafter provided for may become a successor or assign of Declarant.

**3.7 Declaration.** "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of North Meadow.

**3.8 Lot.** "Lot" shall mean any parcel of the Property shown on the Plat and identified therein as a lot or site, excluding that portion, if any, of such Lot which is shown on the Plat as being a portion of the Common Areas.

**3.9 Member.** A "Member" shall mean any person or entity holding membership in the Association.

**3.10 Owner.** "Owner" shall mean the party or parties who own fee simple title to a Lot or own that estate or interest with respect to a lot which is most nearly equivalent of fee simple title.

**3.11 Plat.** "Plat" shall mean the Plat of North Meadow, an Addition to Andover, Butler County, Kansas, recorded March 24, 1995, as document number 2055, in the office of the Butler County Register of Deeds, as it may be modified or supplemented from time to time.

**3.12 Property.** "Property" shall mean the real property described on Exhibit A attached hereto.

## **ARTICLE IV.**

### **RESTRICTIONS ON USE OF THE PROPERTY**

**4.1 Excavations.** No excavation shall be made except in connection with (a) improvements approved as herein provided, and (b) Declarant's development of the Property. Upon completion of such construction, exposed openings shall be backfilled and disturbed ground shall be graded and landscaped.

**4.2 Drainage.** No Owner shall do any work, construct any improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Areas as established in connection with the approval of the final plat maps applicable to the Property, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee, the Board, or any public authorities having jurisdiction.

**4.3 Requirement to Plant Lawn and Trees.** The Owner of each Lot shall plant at least two (2) three-inch caliper trees and fifteen (15) shrubs and/or bushes, of a species type acceptable to the Architectural Control Committee. Each Owner shall submit his or her plan concerning the planting of trees, shrubs and bushes to said Architectural Control Committee within sixty (60) days following completion of a residence on the Lot. Within thirty (30) days following final approval by the Architectural Control Committee (as modified in accordance with the requirements of such committee), each Owner shall plant the trees, shrubs and/or bushes referred to above and shall either seed or sod the lawn portion of such Lot; provided, however, that if such 30-day period is not within the usual growing season planting may be delayed until the first 30 days of the next following growing season. In the event weather

conditions or circumstances reasonably prevent any Owner from complying with the time schedules noted above, Declarant shall extend such time requirements as may be reasonably necessary in order to perform his or her obligations hereunder.

**4.4 Maintenance of Landscaping, Gardens.** Each Owner of each Lot shall maintain the landscaping upon his or her Lot or Lots in good condition. Each Owner shall diligently maintain, cultivate, husband, protect and preserve the shrubs, trees and lawn upon the Lot of the Owner, including, without limitation, removal of dead branches, dead trees and brush, lawn mowing and performance of other tasks calculated to remove or eliminate material which constitutes or creates a fire hazard or unsightly appearance. Where required by the Architectural Control Committee, vegetable and other gardens shall be screened so as not to be visible from any other Lot or the Commons Areas. No garden(s) on any Lot may exceed 200 square feet in area without the prior approval of the Architectural Control Committee.

**4.5 Association May Trim or Prune.** The Association shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which, in the opinion of the Association, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining Property, obscures the view of street traffic or is unattractive in appearance; provided, however, the Owner shall be given fifteen (15) days prior written notice by the Association of such action.

**4.6 Lot Splits; Antennas; Trailers and Campers.** Except for the division of lots by Declarant prior to sale by Declarant, no Lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise.

No facilities, including poles and wires, for the transmission or generation of electricity, telephone message and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas or satellite dishes of any kind shall be allowed unless 100% obscured from sight from anywhere other than from subject lot itself. No activity shall be conducted on any Lot which interferes with television or radio reception on any other Lot. No boats, boat trailers, house trailers, campers, camper trailers, recreational vehicles or similar items shall stored or parked in the open on any Lots, streets or the Common Areas.

**4.7 Trees.** With the exception of trees within the perimeter of proposed improvements on any Lot or Common Areas (which improvements are approved by the Architectural Control Committee pursuant to this Declaration), trees removed by Declarant, trees within ten (10) feet of such improvements, or trees referred to in paragraph 4.14 hereof, no tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the Architectural Control Committee. The Architectural Control Committee, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. Except as to the trees within the perimeter of proposed Improvements or within ten (10) feet thereof as mentioned above, the Architectural Control Committee may designate certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 4.7, the Architectural Control Committee and its agents may come upon any Lot during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and

promulgated pursuant to the provisions hereof. Neither the Architectural Control Committee nor its agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

**4.8 Animals.** No birds, reptiles, animals or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Property without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the residence site and must be kept on a leash when outside the residence site and on the Common Areas. Owners shall control emitted noises (e.g., barking, howling, etc.) of their pets at all times to provide quiet enjoyment for all Owners.

**4.9 Signs.** Declarant may erect such signs as it deems appropriate without any approval, but otherwise, no sign or other advertising device of any nature shall be placed upon any Lot or Common Area, except real estate "For Sale" signs approved by the Architectural Control Committee as to aesthetics. The Association may remove nonconforming signs upon three (3) days' notice to the Owner, such removal to be at the cost of said Owner.

**4.10 Mobile homes and Prefabricated Buildings.** No building, trailer, mobile home, prefabricated house (other than elements of houses which are prefabricated and approved by the Architectural Control Committee), garage, basement, tent, outbuilding or building in the

course of construction shall be used temporarily or permanently as a residence on any Lot.

**4.11 No Storage; Trash.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot or on the Common Areas, except that building materials may be stored on a lot during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Architectural Control Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same.

**4.12 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.

**4.13 No Mining or Drilling.** No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

**4.14 Sight Lines.** No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadway shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five (25) feet from the intersection of the street lines (or in the case of a rounded property corner, from the intersection of the street lines extended past the corner), unless written

approval of the Architectural Control Committee is obtained. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

**4.15 Motor Vehicles.** No motor vehicles of any type, other than construction or maintenance vehicles authorized by the Association, shall be operated on any of the Common Areas.

**4.16 Garages.** Garage doors which face on a street shall be kept closed at all times except for purposes of entry, exit or maintenance.

**4.17 Noxious, Dangerous and Offensive Activities Prohibited.** No noxious, dangerous or offensive activity shall be carried on or permitted, nor shall anything be done which may become an annoyance or nuisance to the neighborhood.

**4.18 Maintenance of Drainage Channels and Swales.** Each Owner shall maintain, mow and keep in good repair and condition any drainage channels and swales located on any Lot owned by such Owner, in accordance with the master drainage plan in effect from time to time.

**4.19 Model Homes and Real Estate Offices.** All else herein notwithstanding, any Lot owned by Declarant or persons so authorized by Declarant may be used for a model home or real estate office until residences have been constructed on all Lots.

**4.20 Laundry and Machinery.** No clothing or any other household fabric shall be hung in the open on any Lot and no clotheslines or similar devices shall be allowed. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence, yard or garden.

**4.21 Fences and Walls.** Except for the fence and/or fence monuments Declarant intends to construct around the perimeter of portions of the Property, no Owner of any Lot which abuts a Common Area shall construct on such Lot any fences or walls; except, however, This regulation shall not prohibit the construction of fences on such Lots constructed only of black wrought iron which do not exceed four (4) feet in height and which do not materially obstruct the passage of light and air. The construction of wooden fences not to exceed six (6) feet in height behind a residence and/or garage on any Lot not abutting Common Area, as approved by the Architectural Control Committee shall be permitted. Notwithstanding anything to the contrary appearing herein, no wooden or other fencing shall be installed behind or in front of wrought iron fence installed around the perimeter of portions of the Property. Any material other than black wrought Iron or wood for fencing must be approved by the Architectural Control Committee.

**4.22 Outside Burning.** There shall be no exterior fires, except barbecue, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in improved areas designated for such purposes. No Owner shall permit any condition on his or her Lot which creates a fire hazard or is in violation of fire prevention regulations.

**4.23 Noise.** No exterior horns, whistles, bells or other sound devices which may annoy neighboring Owners, except doorbells and security

devices, shall be placed or used on any Lot, Common Area or improvement thereon.

**4.24 No Obstruction.** There shall be no obstruction of the pedestrian walkways located upon any Lot for purposes of circulation of foot traffic or any interference with free use thereof, except such obstruction as may be reasonably required in connection with repairs of such walkways.

**4.25 No Business or Commercial Activity.** No Lot shall be used at any time for business, commercial or professional activity, including home occupations, except that (a) Declarant and those designated by Declarant may use any portion of the Property owned by Declarant or those designated by Declarant in connection with real estate sales efforts, and (b) individuals may conduct limited business activities as approved by the Board, in its sole discretion, from time to time, which business activities shall not result in any significant traffic from customers or business associates.

**4.26 Damage or Destruction of Improvements.** In the event of complete or partial damage or destruction of any improvements on a Lot for any reason whatsoever, the Owner of such Lot shall promptly proceed to repair and replace such improvements, subject to approval of the Architectural Control Committee, as though such repair or replacement involved construction of an original structure, or shall promptly proceed to raze the improvement and landscape the Lot formerly occupied by such improvement in a manner approved in writing by the Architectural Control Committee.

**4.27 Restrictions Not Exclusive.** The 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 regulations of any governmental

authority. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations or the Declaration shall be taken to govern and control.

**4.28 Solar Panels.** No solar panels or similar items may be installed upon any Lot, or upon any improvement on any Lot, without the prior approval of the Architectural Control Committee.

**4.29 Boating.** No watercraft shall be operated upon any of the lakes or bodies of water on the Property without the prior written approval of the Architectural Control Committee, and if such approval is granted, such operation shall conform to all rules and regulations promulgated by such Committee for such use.

**4.30 Swimming.** There shall be no swimming or wading in any of the lakes or waterways (not including swimming pools, if any), located on the Property.

**4.31 Dumping Trash Prohibited.** No garbage, trash or other refuse shall be dumped in any Common Areas or into dry lake or body of water on the Property.

**4.32 Set-Back Requirements.** All buildings, structures or other improvements to be constructed or maintained on a Lot, except landscaping and necessary crossings by access drives and underground utility lines, shall be set back from the boundaries of the lot as prescribed by the Plat or the ordinances of the City of Andover, whichever is more restrictive; provided, however, that except as otherwise limited by applicable laws, ordinances or regulations, the foregoing set-back requirements shall not be applicable to any improvement, building or structure constructed below the surface level of

the ground, or to swimming pools constructed in the ground, or to any tennis courts, paddle tennis courts or similar sports surfaces constructed at ground level, but nothing contained in this provision shall be deemed to permit the installation or operation of any lighting equipment in such areas.

**4.33 Entrance Treatment; Walls.** Declarant may, in its sole discretion and at its own expense, construct or install entrance treatments, a fence and/or wall, of Declarant's own choice, type and design, on any or all Lots adjacent to Lakeside Drive, said entrance treatments, fence or wall to be located outside the rear yard building set-back line. The Association is hereby granted a perpetual, nonexclusive easement to enter upon any Lot on which there is situated an entrance treatment, fence or wall fastened or erected by Declarant and to maintain, improve, repair and/or replace the same.

**4.34 Leasing Restriction for Owners of Record as of the Date of the Filing of this Amendment.** Except as otherwise authorized by a waiver granted by the Board as specifically enumerated herein, no Owner of a Lot shall rent or lease such Lot or any portion of a Lot for business, speculative investment or any other purpose. Further, no Owner of any Lot may enter into any form of "Rent to Own" agreement for such Lot or any portion of a Lot. Provided, however, any Owner renting or leasing a Lot as of the date of recording of this Amendment may continue renting or leasing such Lot for a period of time not to exceed the earlier occurrence of: (i) the sale, assignment, conveyance, contribution or other transfer of the Lot by the Owner as of the date of recording of this Amendment; (ii) the death of the Owner of the Lot; (iii) the cessation by the Owner to rent or lease the Lot for more than three (3) consecutive months following the date of recording of this Amendment; or (iv) three (3) years. The Board may grant a waiver to this rental or leasing limitation for any hardship situation that may require temporary leasing including, but not limited to, loss of employment, a call to military service, a

temporary or permanent job transfer, or a family illness. Any waiver granted under this provision must be in writing, signed by the President of the Board, and shall expire within one year of being granted unless otherwise extended in writing by the Board. No request for a waiver will be considered by the Board if the Owner owes the Association any money; there is an unsatisfied Lien in favor of the Association against any Lot owned by the Owner; there is a pending lawsuit between the Board and the Owner; or the Owner has received written notice from the Board of a covenant violation and the covenant violation has not been cured to the satisfaction of the Board.

**4.35 Leasing Restriction for Persons Who Become Owners of Record after the Date of the Filing of this Amendment.**

Except as otherwise authorized by a waiver granted by the Board as specifically enumerated herein, no Owner of a Lot shall rent or lease such Lot or any portion of a Lot for business, speculative investment or any other purpose. Further, no Owner of any Lot may enter into any "Rent to Own" agreement for such Lot or any portion of a Lot. The Board may grant a waiver to this rental or leasing limitation for any hardship situation that may require temporary leasing including, but not limited to, loss of employment, a call to military service, a temporary or permanent job transfer, or a family illness. Any waiver granted under this provision must be in writing, signed by the President of the Board, and shall expire within one year of being granted unless otherwise extended in writing by the Board. No request for a waiver will be considered by the Board if the Owner owes the Association any money; there is an unsatisfied Lien in favor of the Association against any Lot owned by the Owner; there is a pending lawsuit between the Board and the Owner; or the Owner has received written notice from the Board of a covenant violation and the covenant violation has not been cured to the satisfaction of the Board.

## **ARTICLE V.**

### **ARCHITECTURAL CONTROL**

**5.1 Approval of Changes Required.** The approval of the Architectural Control Committee shall be required for any Change in the Existing State of Property by or on behalf of any party other than Declarant. Except as to Declarant, no work shall be commenced to accomplish a proposed Change in the Existing State of Property until the Architectural Control Committee shall approve the change. No proposed Change in the Existing State of Property shall be deemed to have been approved by the Architectural Control Committee unless such approval is in writing, provided that approval shall be deemed given if the Architectural Control Committee fails to approve or disapprove the proposed change or to make additional requirements or request additional information within ten (10) days after a full and complete description of the proposed Change in the Existing State of Property has been furnished, together with a specific request for such approval. In the event any Owner is dissatisfied with any decision of the Architectural Control Committee with regard to such Owner's Lot, such Owner shall have the right to appear before the Architectural Control Committee to seek such variance or relief as he or she deems appropriate. However, the final decision of the Architectural Control Committee shall be conclusive on all matters within the scope of its authority under this Declaration.

**5.2 Forms of Plans and Specifications.** Any proposed Change in the Existing State of Property shall be in such form and shall contain such information as may be required by the Architectural Control Committee's standards as referred to in Section 5.3 below.

**5.3 Standards of the Architectural Control Committee.** The Architectural Control Committee shall prepare and furnish to any Owner

written standards which shall set forth the general purposes of the Architectural Control Committee in reviewing proposed Changes In the Existing State of Property, basic building restrictions and requirements, architectural review procedures and requirements and regulations applicable with respect to construction. Such standards may be amended, modified or supplemented from time to time by the Architectural Control Committee.

#### **5.4 General Criteria for Architectural Control Committee; Adopting Standards.**

The Architectural Control Committee shall have complete discretion to approve or disapprove any Change in the Existing State of Property. The Architectural Control Committee shall exercise such discretion with the following objectives in mind, among others: (a) to carry out the general purposes expressed in this Declaration; (b) to prevent violation of any specific provision of this Declaration or any Supplementary Declaration; (c) to prevent any change which would be unsafe or hazardous to any persons on-properties; (d) to minimize obstruction or diminution of the view of others; (e) to preserve visual conformity and to prevent any marked or unnecessary transition between improved and unimproved areas; (f) to assure that any change will be of good and attractive design and in harmony with development on other portions of the Property; and (g) to assure that materials and workmanship for all improvements are of high quality, comparable to other improvements in the area. The Architectural Control Committee shall establish and modify from time to time standards and guidelines for such Changes in the Existing State of Property as it may deem appropriate.

**5.5 Minimum Sizes of Residences.** The ground floor of the main structure of any one-story residential dwelling, exclusive of one-story open

porches and garages, shall be not less than 1,300 square feet. A dwelling of more than one story shall not be less than 1,450 square feet (exclusive of such porches and garages). These minimum square feet requirements apply to all building lots in North Meadow Planned Unit Development except those in Parcel #1.

**5.6 Completion of Work After Approval.** After approval of the Architectural Control Committee of any proposed Change in the Existing State of Property, the proposed change shall be accomplished as promptly and diligently as possible, in complete conformity with the description of the proposed change, and with any plans and specifications therefore given to the Architectural Control Committee. Failure to accomplish the change within one year after the date of approval or to complete the proposed change strictly in compliance with the description thereof and the plans and specifications therefore shall operate automatically to revoke the approval of the proposed change, and, upon demand by the Architectural Control Committee, the Property shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed change. The Architectural Control Committee shall have the right and authority to record a notice to show that any particular Change in the Existing State of Property has not been approved or that any approval given has been revoked.

**5.7 Removal and Alteration of Structures; Liens.** If any structure shall be altered, erected, placed or maintained upon any Lot or any new use commenced on any Lot other than in accordance with plans and specifications approved by the Architectural Control Committee pursuant to the provisions of the Declaration, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein, and upon written notice from the

Architectural Control Committee, any such structure so altered, erected, placed or maintained upon any Lot in violation hereof shall: (a) be removed or re-altered and any such use shall be terminated so as to extinguish such violations; (b) if, thirty (30) days after any notice of violation referred to above, the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, the Association or the Architecture Control Committee shall have the rights through their agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violations, and the cost thereof shall be a binding, personal obligation of such Owner and the cost may mature into a lien (enforceable in the same manner as a mortgage) upon the Lot(s) in question in the following manner: The Association or the Architectural Control Committee may record an Affidavit of Nonpayment of Removal or Alteration Charges in the office of the Register of Deeds of Butler County, Kansas, stating (i) the legal description of the property on which the lien is claimed; (ii) the names(s) of the Owner(s) of said property; and (iii) the amount of the Removal and Alteration Charges which are unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the property, whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior; (c) in the event a lien is obtained pursuant to this Declaration and thereafter the Removal or Alteration Charges, plus interest at a rate equal to 4% per annum over the prime or base interest rate charged from time to time by Bank IV, Wichita, adjusted on each day in which there is a change in said prime or base interest rate (provided that the interest rate shall never exceed the maximum allowed by law), shall be fully paid, the Association or the Architectural Control Committee shall, within ten

(10) days following payment: (i) file with the Register of Deeds of Butler County, Kansas, an Affidavit of Payment of Removal or Alteration Charges which created the lien which has been satisfied; (ii) state the legal description of the property affected; and (iii) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Removal or Alteration Charges shall fully and completely release the lien referred to in said Affidavit and said Affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged. If the Bank referred to above does not have a prime or base rate in effect at any time, then the Board shall establish an applicable rate; (d) in the event of any transfer, sale or assignment of any Lot or Lots to a bona fide purchaser, and in the event that no Affidavit of Nonpayment of Removal or Alteration Charges has been recorded as provided in this Section 5.6 prior to such transfer, sale or assignment any such Affidavit filed subsequent to the above-referenced transfer, sale or assignment shall be invalid and unenforceable.

**5.8 Right of Inspection.** The Association, the Architectural Control Committee or any of their agents may, at any reasonable time or times, enter upon and inspect any Lot or any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions hereof; and neither the Architectural Control Committee, the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**5.9 Estoppel Certificate.** The Association shall be authorized to, and shall, upon the reasonable request of any interested person, after confirming

necessary facts with the Architectural Control Committee, furnish a certificate with respect to approval or disapproval by the Architectural Control Committee of any Change in the Existing State of Property, and any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein.

**5.10 Variances by Architectural Control Committee.** The Architectural Control Committee may authorize variance from compliance with any of the provisions, covenants, conditions and restrictions contained in either this Declaration or such Committee's standards in effect from time to time when circumstances such as topography, natural obstructions or hardship may require. Such variances must be evidenced in writing and may be recorded. If such variances are granted, no violation of the provisions, covenants, restrictions or conditions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted, and subsequent Owners may rely on and shall be bound by the provisions set forth in this variance. The granting of such a variance shall not operate to waive any of the provisions, covenants, conditions or restrictions contained in this Declaration for the purpose except as to the particular portion of the Property and the particular property covered by the variance.

**5.11. Development by Declarant.** Notwithstanding anything to the contrary contained herein, the provisions of this Article V shall not apply to Declarant's construction of street, sewers, utilities, fences, fence monuments, walls, landscaping, recreational improvements, sidewalks and similar items.

## **ARTICLE VI.**

### **ARCHITECTURAL CONTROL COMMITTEE**

**6.1 Architectural Control Committee Membership.** The Architectural Control Committee shall consist of three (3) members, which members shall initially be appointed by Declarant and, upon relinquishment of such rights by Declarant as hereafter provided, by the Board, Declarant may relinquish its rights or any portion thereof under this Section 6.1 to the Board by advising the Board in writing of its intent to do so, and in such event, the Association shall have the authority of Declarant under this Section. Declarant shall relinquish such rights at or prior to such time as Declarant shall cease to own any Lots. The Association shall promptly furnish the names and addresses of the current members of the Architectural Control Committee to any interested person.

**6.2 Action by Architectural Control Committee.** The vote or written consent of any two (2) members of the Architectural Control Committee shall constitute action by the Architectural Control Committee.

**6.3 Power to Employ Consultants.** The Architectural Control Committee shall be empowered to employ on behalf of the Association consultants and agents as it may deem necessary to assist it in the performance of its duties.

## **ARTICLE VII.**

### **FORMATION AND FUNCTIONS OF THE ASSOCIATION**

**7.1 Formation of Association.** The Association has been or will be incorporated as a non-profit corporation for a perpetual term under the laws of the State of Kansas.

**7.2 Purpose of Association.** The Association has been or will be formed to further the common interests of the Members and to perform the

functions hereinafter required or permitted to be performed by the Association.

**7.3 Rules and Regulations.** The Association shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate use of the Property and may provide for enforcement of any such rules and regulations through reasonable and uniformly applied fines. Each Owner shall be obligated to comply with and to see that such Owner's tenants, guests and invitees comply with any such rules and regulations.

**7.4 Initial Performance by Declarant.** The initial performance of the functions of the Association and the Board as specified in this Declaration and the exercise and enforcement of rights (including collection and use of assessments and remedies given to the Association herein for the purposes herein stated may be conducted by Declarant in lieu of the Association and/or the Board. Declarant shall transfer all of the foregoing rights and responsibilities to the Association or any successor(s) thereto at any time on or before thirty (30) days following the sale of the last Lot owned by Declarant but may transfer such rights and responsibilities as such earlier date as it may so desire.

## **ARTICLE VIII.**

### **OPERATION OF THE ASSOCIATION; ASSESSMENTS**

**8.1 Membership in the Association.** The Owner of a Lot shall automatically be the holder of a membership in the Association appurtenant to that Lot, and the Association membership for that Lot shall automatically pass with fee simple title to that Lot; provided, however, in the event any Owner shall have entered into a contract to sell his or her interest in the Lot during the time such contract is in force, if the contract vendee is in possession of the Lot, he or she shall be considered to be the Member rather

than the Owner. There shall be one (1) vote for each Lot. When more than one person holds an Interest in any Lot, all of such persons shall be members but except as provided below, in no event shall more than one (1) vote be cast with respect to any Lot. The vote for such Lot shall be exercised as the Owners of such Lot may determine among themselves, provided that if they are unable to so determine, none of such Members shall be entitled to vote. Notwithstanding the foregoing, Declarant shall be entitled to three (3) votes for each single Lot of which it is the Owner.

**8.2 Board of Directors.** The affairs of the Association shall be managed by the Board, which may, however, by resolution, delegate any portion of its authority to an Executive Committee or an Officer, Executive Manager or Director of the Association. The members of the Board shall be elected by the Members; provided, however, Declarant shall have the right to appoint the members of the Board until it either (a) no longer owns a Lot, or (b) relinquishes its right to appoint Board members, whichever first occurs.

**8.3 Certificate of Incorporation and Bylaws.** The purposes and powers of Association and the rights and obligations with respect to Members shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. Such Articles and Bylaws include provisions with respect to corporate matters, including provisions such as notices, record dates and quorums for meetings of directors and Members, but no such provisions may be inconsistent with any provision of this Declaration.

**8.4 Initial Lot Assessments.** Upon transfer of title of any Lot by Declarant to the initial purchaser(s) thereof, such initial purchaser(s) shall pay an initial assessment in the amount of \$100.00 to provide immediate funds available for the uses described in Section 8.7 hereof.

**8.5 Assessments.** All of the Lots shall be subject to an annual assessment charge as set forth in Section 8.6 hereof, which is ordinarily due and payable by the respective Owner's thereof to the Association annually in advance on the 1st day of January in each year; provided, however, the Board may permit the annual assessment charge to be paid either semi-annually or monthly. Due to the anticipated completion of certain Common Area improvements, assessments will not begin until January 1, 1996.

**8.6 Annual Assessments.** (a) The assessment for the period from April 1, 1995 thru December 31, 1995 shall be \$0.00. If the assessments were assessed hereunder for the entire calendar year 1995, the Annual Assessment would be \$120.00. The Annual Assessment by the Board for any subsequent year to an amount which is not increased more than 10% compounded above the maximum permitted annual assessment for the previous year without a vote of the Members as provided in (b) below. (b) The annual assessment for any calendar year commencing in 1996 may be increased to an amount greater than that permitted by Subsection (a) of this Section 8.6 only by an affirmative vote of the majority of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

**8.7 Use of Assessment Funds.** Assessment funds shall be used for purposes as the Association shall determine necessary and advisable, which may include but shall not be limited to the following: for improving and maintaining the Common Areas and other property of the Association, including entry areas, monuments, and fencing, if any; for planting trees and shrubbery and the care thereof; for payment of expenses incidental to the proper operation and maintenance and repair of recreational facilities located within the Common areas; for collecting and disposing of garbage, ashes and rubbish; for contracting security services; for caring for vacant property; for

removing grass or weeds; for street cleaning; for street signs and street lights; for construction, purchasing, maintaining or operating any community service; for purchase of insurance; for legal costs and expenses; for supplies and fertilizers; for snow removal; for doing any other thing necessary or advisable, in the opinion of the Association, for the general welfare of the Owners; for expenses incidental to the enforcement of these restrictions; for the payment of operating expenses of the Association; or for any other purpose within the purposes for which the Association is incorporated.

**8.8 Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

**8.9 Lien for Assessments and Fines.** The Association shall have a lien against each Lot to secure payment of any assessment, fine or other amount due and owing the Association by the Owner of that lot, plus interest from the date such amount was due and payable at a rate equal to four (4) percent per annum over the prime interest rate charged from time to time by Bank IV, Wichita, adjusted on each day which there occurs a change in said prime interest rate (provided that the interest rate shall never exceed the maximum allowed by law), in addition to all costs and expenses of collecting the unpaid amount, including but not limited to reasonable attorneys' fees. The lien provided herein shall be junior to the lien of any first mortgage on any Lot taken in good faith and for value and perfected by

recording in the office of the Register of Deeds for the County of Butler, Kansas, prior to any and all other liens. The Notice of Lien shall set forth the amount of any assessment, fine or other amount due and owing to the Association, specifying the date such amount was due and payable and from which interest accrues, specifying all costs and expenses, including reasonable attorneys' fees, of collecting the unpaid amount to the date of recording such Notice of Lien, describing the Lot or the Owner or Owners of the Lot. Each Owner acknowledges and agrees by acceptance of such ration that the lien of the Association for assessments due hereunder, and for all other sums which may become due the Association hereunder from an Owner, shall be superior to any homestead exemption as is now or may hereafter be provided by Kansas or federal law. The acceptance of a deed or other interest of a Lot subject to this Declaration shall constitute an express waiver of the homestead exemption as against all sums which may become due the Association from the Owner of such Lot.

**8.10** *Numbering error. This Item does not exist in the original document.*

**8.11 Successor's Liability for Assessments.** The Association's lien for delinquent assessments, damages, costs, expenses, attorneys' fees and all other charges allowed hereunder against a Lot shall pass to an Owner's successors in title, regardless of whether said obligation was expressly assumed by them, except with respect to the sale or transfer of any Lot which is subject to any mortgage pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, which became due prior to such sale or transfer. Upon acquisition of title to a Lot, an Owner shall be bound by the terms hereof.

**8.12 No Offsets.** All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be

permitted for any reason, including without limitation any claim of non-use of the Common Areas or any claim that Declarant, the Association, the Board or the Architectural Control Committee is not nor has been properly exercising its duties and powers under this Declaration.

## **ARTICLE IX.**

### **PROPERTY RIGHTS**

**9.1 Easement in Common Area.** Declarant hereby dedicates and conveys to each Owner a right and easement of enjoyment in and to the Common Areas; provided, however, that use of the Common Areas and recreational improvements and amenities placed thereon shall be governed by any rules and regulations adjusted by the Board from time to time. Said right and easement shall not be personal but shall be considered to be appurtenant to said Lots, whether specifically set forth in deeds to the Lots or not. Declarant hereby covenants for itself, its successors and assigns that it will convey by quit claim deed, at such time as Declarant no longer owns any Lot, or such earlier date as Declarant shall determine in its sole discretion, a fee simple-title to the Common Areas to the Association, free and clear of all encumbrances and liens except any current ad valorem or special assessment taxes. The Association shall accept title to such Common Areas, together with the responsibility to perform any and all functions and duties of taxes and insurance on the Common Areas and for the proper maintenance of the open spaces. The title to the Common Areas vested in the Association shall be subject to the rights and easements of enjoyment in and to such Common Areas by its Members.

**9.2 Description of Common Areas.** The Common Areas consist of the following real estate and any improvements now or hereafter located thereon:

Parcel 2 as shown on the North Meadow PUD and appropriate subdivision entries and Improvements thereto

**9.3 Reservation of Rights in Common Areas.** Notwithstanding any other provision of this Declaration, Declarant reserves the right to grant easements within the Common Areas for the installation, repair and maintenance of water main, sewers, drainage courses, public walkways and other public utilities shall be installed in such a manner so as to minimize damage to the natural features of the Common Areas.

## **ARTICLE X.**

### **ADDITIONAL LAND**

**10.1 Additional Land.** Declarant may from time to time annex additional real property, including additional Common Areas, to the property covered by this Declaration and thereby subject the same to all the terms, provisions and conditions of this Declaration by the execution and filing for recordation with the register of Deeds of Butler County, Kansas of an instrument expressly stating an intention so to annex and describing such additional real property to be so annexed. During a ten (10) year period commencing with the date of the recording of this Declaration, Declarant, its successors or assigns, may annex such additional real property, in its absolute discretion. From and after the termination of said ten-year period, such additional real property may be annexed to the Property, provided that such annexation is approved in writing by a majority of the votes of the Members entitled to vote.

## **ARTICLE XI.**

### **MISCELLANEOUS PROVISIONS**

**11.1 Duration of Declaration.** All provisions contained in this Declaration may be amended or repealed, or additional provisions added to

this Declaration, by the recording of a written instrument or instruments specifying the amendment or the repeal, executed by the Owners as shown by the records in the office of the Register of Deeds of the County of Butler, El Dorado, Kansas, of not less than a Majority of the lots then subject to this Declaration, provided that so long as Declarant owns one (1) Lot, any such instrument or instruments shall require the written consent of Declarant.

**11.2 Amendment of Declaration.** Any provision contained in this Declaration may be amended or repealed, or additional provisions added to this Declaration, by the recording of a written instrument or instruments specifying the amendment or the repeal, executed by the Owners as shown by the records in the office of the Register of Deeds of the County of Butler, El Dorado, Kansas, of not less than a majority of the lots then subject to this Declaration, provided that so long as Declarant owns one (1) Lot, any such instruments or instruments shall require the written consent of Declarant.

**11.3 Effect of Provisions of Declaration.** Each provision of this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument, and each Owner shall be bound by the terms of the Declaration.

**11.4 Enforcement and Remedies.** The Association, Declarant or any Owner shall have the right to enforce by any proceeding, at law or in equity, all restrictions, conditions, covenants, reservations, architectural standards, liens and charges now or hereafter imposed by the provisions of this Declaration.

**11.5 Limited Liability.** Neither Declarant, the Association, the Board, the Architectural Control Committee nor any member, agent or employee of the

same shall be liable to any party for any act or for any failure to act with respect to any matter if the act or failure to act was in good faith and without malice, and such Declarant, the Association, the Board, the Architectural Control Committee and any member, agent or employee of the same shall be reimbursed by the Association for any costs and expenses, including but not limited to attorneys' fees reasonably incurred by them with the prior approval of the Board, which approval shall not unreasonably be withheld or delayed, as a result of threatened or pending litigation in which they are or may be named as parties.

**11.6 Successors and Assigns.** Except as otherwise provided herein, this Declaration shall be binding upon and shall insure to the benefit of the Declarant, the Association and each Owner and the heirs, personal representatives, successors and assigns of each. Declarant shall have the right and power to assign and delegate to the Association, or any successor or successors thereto, at any time and from time to time, all or any part of any of the rights, powers and authority contained in this Declaration.

**11.7 Severability.** Invalidity or unenforceability of any provision of this Declaration, in whole or in part, shall not affect the validity or enforceability of any other provision or any valid enforceable part of provision of this Declaration.

**11.8 Captions.** The captions and heading in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.

**11.9 No Waiver.** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

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

Builders, Inc.

Bradley K. Smisor

By: Bradley K. Smisor

Title: Exec. Vice President

STATE OF KANSAS )

) ss:

COUNTY OF BUTLER )

BE IT REMEMBERED, that on this 20<sup>th</sup> day of March, 1995, before me, a notary public in and for the county and state aforesaid, personally appeared Bradley K. Smisor to be the Executive Vice President of Builders, Inc., a Kansas corporation, and the same person executed the above and foregoing Declaration as his free and voluntary act and deed, on behalf of said corporation.

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

Beth A. Butler

Beth A. Butler

Notary Public

My appointment expires:

February 5, 1999

## EXHIBIT "A"

Lots 3-11 inclusive Block 2; Lots 1-8 inclusive Block 3 Andover Heights Eighth Addition and Lots 1-5 Block 1; Lots 1-12 Block 2; and Lots 1-20 Block 3 North Meadow Addition, all in Andover, Butler County, Kansas **AND** (per Amendment Of Declaration Of Covenants, Conditions And Restrictions of North Meadow Home Owners Association To Annex Additional Property, dated December 1, 1997 and recorded at Book 831, Page 34) North Meadow Third Addition and Lots 1, 2, 3, 4, 5, and 6, Block 3, Quail Crossing Addition, all in Andover, Butler County, Kansas

State of Kansas, Butler Co.

Recorded March 24, 1995

At 4:00 P.M. #2056 Book 734