

**DECLARATION OF RESTRICTIONS OF
WINDSOR TRACE, A SUBDIVISION
IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS**

This declaration is made this 12th day of April, 1996, by LONE ELM DEVELOPMENT, a Kansas Limited Liability Company.

WHEREAS, LONE ELM DEVELOPMENT, L.L.C., hereinafter referred to as "LONE ELM" or "DEVELOPER" is the owner and developer of certain real property located in Johnson County, Kansas, and is desirous of placing certain restrictions on the real property described as follows:

WINDSOR TRACE, a subdivision of land in the City of Olathe, Johnson County, Kansas according to the recorded plat thereof filed in the office of the Johnson County Register of Deeds as Document No. 2580946, in Book 94, at Page 25.

WHEREAS, it is the desire and intent of LONE ELM to restrict the above mentioned real property to preserve and enhance the value of the development and improvements constructed thereon and to keep its use consistent with the intent of the developer;

NOW, THEREFORE, in consideration of the premises, LONE ELM, for it and its successors, transferees, grantees and assigns, does hereby subject the above-described property to the following restrictions:

1. DEFINITIONS:

(a) "LOT" shall mean and refer to any separately numbered tract upon the recorded subdivision plat.

(b) "DWELLING" or "UNIT" shall mean and refer to one enclosed living section of a building situated upon the property designed and intended for use and occupancy as a residence.

(c) "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated in the subdivision.

(d) "DEVELOPER" shall mean LONE ELM DEVELOPMENT, L.L.C.

2. RESIDENCES: The real estate above described shall be improved, used and occupied for private residential purposes only. Any dwelling unit erected or maintained on any of the lots hereby restricted shall be designated for occupancy by no more than one family, however, this restriction shall not prevent Developer or others authorized by it from erecting temporary buildings and using such temporary buildings or residences for an office, model, sales office or storage purposes during the period of development of said subdivision.

3. ARCHITECTURAL REVIEW COMMITTEE. There shall be an architectural review committee which shall consist of three(3) individuals, who may or may not reside in the subdivision. For two (2) years from and after the date this declaration is recorded in the office of the Register of Deeds of Johnson County, Kansas, the committee members shall be appointed by Developer; each members term of appointment shall be as designated by Developer. In the case of death or resignation of any such committee member during such two year period, Developer shall appoint a successor who shall serve in lieu of such deceased or resigned committee member.

After the expiration of such original two (2) year period, or upon activation of the Home Owner's Association, whichever shall be later, one member shall be appointed by the Board of Directors of the Home Owner's Association and two members shall be appointed by Developer, for such terms as Developer deems appropriate. Committee members who have resigned or died shall be replaced by the appointing entity. Appointments made while the conditions of Par.24.B.2 are in effect shall be two members appointed by Homes Association; one member shall be appointed by Developer. After development of the Subdivision is completed, all members shall be appointed by the Home Owner's Association Board of Directors.

The members of the Architectural Review Committee shall elect a chairman, whose name, address and telephone number shall be kept on file at Developer's office or at the registered office of the Homes Association.

4. PLAN APPROVAL. Wherever this declaration specifies that written approval or consent be obtained for any plans, structures, additions, changes or appurtenances to the land bound by this declaration, such written approval shall be obtained from the architectural review committee, signed by the chairman of such committee, unless approval by Developer is specifically provided for in such provision. Plans shall be submitted to any committee member or to Developer for approval by the committee. The committee shall either approve or disapprove of any plans, structures, additions, changes or appurtenances within ten (10) working days after submission of same. If no written response is made by the committee, either approving or disapproving, within such ten (10) day period, the committee shall be deemed to have approved the matter submitted.

5. UNSIGHTLY PROJECTIONS. No air conditioning apparatus, television or radio antenna, satellite dish, solar panels or any unsightly projections shall be attached to or affixed to the front of any dwelling. Any such projections to be attached to the sides or rear of any residence shall not be installed until receipt of prior written consent.

6. FENCES. No fence shall be erected without prior written consent. The maximum height of any fence shall be six (6) feet. No dog or animal pens or runs of any kind shall be permitted without prior written approval. Fences shall not be erected in the front or side yards of the dwellings and shall not be placed farther toward the front of the dwelling than a straight line extended from the rear building line of said dwelling. Any decorative or privacy fence for a side entrance or patio which extends forward of the rear building line shall not be constructed without prior written approval.

7. OFFENSIVE ACTIVITIES. No business and no noxious or offensive activities shall be carried out upon any lots, nor shall any thing be done thereon which may be or become a nuisance or annoyance to the neighbors or neighborhood.

8. ACCESSORY BUILDINGS. Any accessory building or garage must comply with the same design review as does a single family structure and no accessory building or garage may be occupied as a dwelling. Gazebos, cabanas and outside shelters for barbecue grills, as well as covered decks and patios, may be approved by written consent.

9. AWNINGS, DECK OR PATIO COVERINGS, ETC. Any window or door awnings, lattices or coverings, clothes lines, stove pipes,

exhaust flues, chimneys or any other additions, modifications, alterations or improvements to the grounds or exterior portions of any dwelling shall be prohibited unless prior written consent is obtained.

10. ANIMALS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lots, except dogs, cats or other household pets, provided they are not kept, bred or maintained for any commercial purposes and do not constitute a nuisance to the neighbors or neighborhood. The Developer, and subsequently the Home Owners Association Board of Directors when formed, shall have the authority to determine what constitutes a nuisance. Upon such determination, such animal will be removed from the subject lot within three weeks of notification to the owner thereof of such determination or, in the event that a further determination is made that there is a potential for danger from the animal, then within 48 hours of such notification.

11. MAILBOXES. Mail delivery facilities shall be as required by the United States Postal Service.

12. LIGHTS. No lights or other illumination shall be higher than the dwelling on any lot covered by these restrictions without prior written consent.

13. EXTERIOR BASEMENT FOUNDATIONS AND WALLS. Exterior basement foundation and walls which are exposed in excess of eighteen (18) inches above final grade level at any point shall be painted the same color as the house, or covered with siding compatible in color and material with the structure.

14. EASEMENTS. Developer reserves the right for itself and the Home Owners Association to construct pipelines, sewers, drains, gas, electricity and water lines upon, over and across all easements and rights-of-way shown on the recorded plat.

15. LANDSCAPING AND SOD. All lawns shall be fully sodded prior to occupancy of the owner. Each owner of a dwelling shall plant at least two trees within eight feet of the curb on his side of the street, if no trees already exist between the house and the curb. On wooded lots, sod may be eliminated beyond a line 30 feet from the rear of the house. Owners shall attempt to preserve and retain the maximum number and amount of natural trees and vegetation on each lot. However, any trees which might threaten a foundation or drainage system or might pose a safety hazard may be removed at the discretion of the builder or owner. No live tree may be removed which is over four inches (4") in trunk diameter, measured two feet (2') off the ground, unless expressly approved in writing by Developer.

16. TEMPORARY STRUCTURES. No trailer, modular home, manufactured or prefabricated home, mobile home or other structure of a temporary nature may be placed on a lot for use as a dwelling. No existing structures may be moved onto a lot from another location, all construction must be new.

17. ENFORCEMENT. Developer, the Home Owners Association or any owner of any tract or lot in said subdivision shall have the right to seek from any court of competent jurisdiction an injunction, mandatory or otherwise, to prevent a breach, or to enforce compliance with any of said restrictions, and may bring any other proper legal action at law or equity.

18. UNFINISHED STRUCTURE. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six months after commencement of construction. In the event of fire, windstorm or other damage, no building shall be permitted to remain in a damaged condition without commencement of repairs within three months. Further, the owner shall commence construction within six months after purchase of any lot.

In the event of failure of the owner/builder to comply with this section, the developer has the option to buy the lot, which option shall be exercised by written notice to the owner/builder, and within ten (10) days from the receipt of such notice said lot shall be conveyed to the developer for a sum equal to the purchase price of the lot together with the direct cost to the owner/builder of any partially completed improvements on the lot. The term "direct cost" shall be interpreted to include such items of direct cost for material and/or labor consumed upon the lot and other items incurred by the owner directly in connection with the construction or partial construction of such improvements but shall not be interpreted to include indirect costs as overhead and other costs that are attributable to but not directly expended toward the construction. The reimbursement of such costs shall be in addition to the payment of the purchase price of the lot.

19. REQUIRED BUILDING MATERIALS AND COLORS Exterior walls of all buildings, structures and appurtenances thereto shall be of brick, stone, wood siding, wood paneling, plate glass, masonite, or a combination thereof. Windows, doors and louvers shall be of wood, vinyl, colored metal and glass. Roofs shall be covered with "weathered wood" composition shingles. Any building products which may come into general usage for dwelling construction in this area after the date of these restrictions shall be acceptable if approved in writing. All wood and masonite exteriors, except roofs shall be covered with a workmanlike finish of paint and/or stain, unless another finish is approved in writing.

20. MISCELLANEOUS RESTRICTIONS.

(a) Fuel storage tanks are prohibited.

(b) Above ground swimming pools and above ground hot tubs are prohibited, unless completely screened in a manner approved in writing.

(c) No automotive repair or rebuilding or any other form of remodeling or refurbishing, whether for hire or otherwise, shall occur on any of the lots hereby restricted except on a non-commercial basis and not for hire within the confines of any enclosed garage built on the said premises and as permitted under the other provisions in these restrictions.

(d) No automobile, truck, motorcycle, motorbike, motor scooter, boat, airplane, house trailer, boat trailer, camping trailer, motor home, or vehicle of any other type or description may be stored upon any of the lots hereby restricted, except that such storage shall be permitted within the garage of any dwelling constructed on any of the lots hereby restricted. Nothing in this section, however, shall be construed to prohibit the regular parking of not more than three (3) automobiles in running condition and in a reasonable state of repair and preservation on any driveway permitted to be maintained on any of the lots hereby restricted.

(e) Motorized vehicles shall not be operated on any vacant lot or common areas, except for mowing and other maintenance by employees or contractors of Developer or Homes Association.

(f) Garage doors shall be kept closed except during normal use.

(g) No motor vehicles shall be parked in the street for over a twenty-four (24) hour period

21. SEVERABILITY. Unenforceability of any one of these covenants by judgement or court order shall in no way affect any of the other terms or provisions of these restrictions, which shall remain in full force and effect.

22. DURATION. The above covenants and restrictions shall continue and be in full force and effect, unless or until the then owners of the fee simple title of 75 % of the lots situated in said subdivision may release the land or any part thereof from any one or more of said restrictions, at any time, by executing and acknowledging an appropriate agreement in writing for such purpose, and filing same in the office of the Register of Deeds of Johnson County, Kansas.

23. COVENANTS RUNNING WITH THE LAND. The provisions of this Declaration of Restrictions shall be deemed to be covenants running with the land and shall be binding upon the above named developer and all purchasers, successors, transferees, grantees and assigns claiming by, through, or under Developer.

24. HOMES ASSOCIATION. A Homes Association shall be formed upon recordation with the Register of Deeds the Articles of Incorporation by the Developer creating such Homes Association. The Homes Association shall be known by the name of WINDSOR TRACE HOMES ASSOCIATION, INC.

A. MEMBERSHIP IN ASSOCIATION. Every owner of a lot which is subject to assessment shall be a member of the Association and the Association shall administer all common area. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

B. VOTING RIGHTS. There shall be two classes of voting membership in the Association which rights shall be exercised as provided below:

(1) CLASS A. Class A members shall be all owners with the exception of Developer and such members shall be entitled to one vote for each dwelling owned. When more than one person owns an interest in any dwelling, all such persons shall be members; however, they shall all collectively exercise the one vote with respect to any dwelling.

(2) CLASS B. The sole Class B member shall be Developer and such member shall be entitled to two votes for each lot owned. The Class B membership shall cease and shall be converted to Class A membership when the total votes outstanding and the Class A membership equals the total votes outstanding in the Class B membership, which by virtue of the two to one ratio of votes between Class B and Class A will occur when sixty-six percent (66%) of the lots included within this declaration at that time have been sold by Developer; provided however, that if additional land is thereafter annexed into the Association and the subdivision so as to create an additional number of lots of such an amount that the proportion of lots sold is decreased below sixty-six percent (66%), then and in that event the Class B membership shall automatically be recreated in the same manner and in the same condition as it originally existed.

C. COVENANT AND LIEN FOR ASSESSMENTS.

(1) The owner of each lot shall contribute his pro rata share of the costs and expenses of the Association, as more fully set forth below, to the Association. The Association, through its Board of Directors, is charged with the responsibility and authority for enacting, adopting and enforcing assessments for, including but not limited to, the following purposes: Operations of the Association, maintenance, taxes, insurance; legal, tax, and other professional services, upkeep, other obligations of the Association, capital improvements, enforcement of or non-compliance with the Covenants, emergencies and a reasonable reserve for any of the above. The aggregate of these items may not exceed \$25 per month per member unless 75 % of the eligible members so approve. Invoices for assessments may be submitted at any interval fixed by the Association. Capital improvements shall likewise be funded by assessment where properly authorized, as provided elsewhere herein. The \$25 limitation shall not apply to capital improvements.

(2) Should any owner cause or allow to be caused any violation of this Declaration of Restrictions, and allow such violation to continue in effect after written notice to said owner and the expiration of a reasonable time in which to comply, as set forth in the written notice, a non-compliance assessment may be levied by the Board of Directors against such owner. The amount of any such assessment may include costs incurred by the Association in attempting to secure compliance, including but not limited to, reasonable attorneys' fees, and non-compliance penalties as established by the Board of Directors.

(3) Each owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay all assessments levied by the Association. The assessment together with interest, costs, and expenses of collection, including but not limited to reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs, collection expense and attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time the assessment fell due. The Board of Directors shall adopt a collection policy for overdue assessments and may amend the same from time to time. Suit to recover a money judgement for such personal obligation, together with costs and reasonable attorneys' fees, may be maintained by the Association without foreclosing or waiving the lien securing payment of same against the lot. No owner may avoid or diminish such real property or personal obligation by waiver of the use and enjoyment of any of his real property or by abandonment of his real property.

(4) Lots held by the Developer, which have never been sold or which are held as a result of foreclosure or repossession are not subject to assessment by the Association.

(5) A written or printed notice, deposited in the United States Post Office, with postage thereon prepaid, and addressed to the respective owners 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.

D. MAINTENANCE OF COMMON AREA. The Association shall provide for the perpetual maintenance of all common areas, to include the entrance markers and screening easement. Each owner shall be responsible for the maintenance of such owners lot and any improvements thereon. In the event that the Association fails to adequately and properly maintain any common area, the City of

Olathe, Kansas is hereby granted a perpetua easement to enter upon the common area to maintain same.

E. EASEMENTS AND RIGHT-OF-WAY. Developer, the Association and, as provided herein, the City of Olathe, shall have the right of access and an easement to, over and through all of the common area, dedicated easements and platted easements contained within the Association and the subdivision for all purposes which enable such parties to perform their obligations, rights and duties with regard to maintenance, repair, restoration and/or servicing of utilities for the common area in the subdivision.

F. ANNEXATION OF ADDITIONAL LAND. Developer shall have the right to annex additional land into the subdivision and the Association, in which event the owners in such additional, annexed land shall have the same rights in the Association as are contained herein. Upon annexation, the owners in such additional land shall have the same rights to the common areas in the Association and the same right of ingress and egress to the property as the original owners. Developer hereby covenants that annexation shall be mandatory of all land developed in accordance with the Preliminary Plat approved by the City of Olathe of which the land initially bound hereby is a part. Said annexation to occur at the filing of each plat as subsequent phases are developed.

IN WITNESS WHEREOF, the undersigned hereby executes this instrument on the day and year first above written.

LONE ELM DEVELOPMENT COMPANY

FILED
JOHNSON COUNTY, KANSAS

1800

1996 APR 12 A: 9: 59.5

By William E. Kiesling
William E. Kiesling, President

STATE OF KANSAS, SARA F. ULLMANN
REGISTER OF DEEDS
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this 12th day of April, 1996, before me, a Notary Public in and for said County and State, came William E. Kiesling, President of LONE ELM DEVELOPMENT, L.L.C., a person who is personally known to me to be the same person who has the authority and who executed the foregoing instrument of writing and such person duly acknowledged his execution of the same.

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

[Signature]
NOTARY PUBLIC

My appointment expires:

NANCY J. SHEPARD
Notary Public - State of Kansas
My Appt. Expires 3/10/98

Addendum May - 2002

The Windsor Trace Board and homeowners have met and worked together to further clarify and define standards of the Deeds & Restrictions as outlined below:

Section 24C. 2 (a): The board of the Association voted on and passed anew architectural standard attachable by lien, Section 24: C, 2 (a) for penalty in the amount of \$100 per month assessed to the homeowner within 30 days of notification for non-compliance of non-approved neighborhood projects. All projects must be architecturally reviewed and get complete written approval prior to project inception. The homeowner will have a six-month grace period to meet written approval and complete said project. The Association then reserves the right to proceed legally after the six-month period. If the homeowner completes with written approval the project of non-compliance within the six-month grace period all \$100 fines will be reimbursed to the homeowner.

Section 24C, 2(a) was established on May 20, 2002.

The Board also established an additional standard regarding Section 20B of the Deeds & Restrictions on pools and their proper screening:

Section 20B. Standard #1: All pools are prohibited unless completely screened by a 6 foot privacy fence, erected on the appropriate boundary lines of the property, rather than just around the immediate pool area. As pursuant to Section 6 all fence boards must be non-spaced and butted against each other to allow complete screening. All fences should not be erected in the front or side yards of the dwellings and shall not be placed farther from the rear building line of said dwelling.

Section 20B. Standard #1 was established on May 6, 2002.