

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUAIL CROSSING ADDITION

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUAIL CROSSING ADDITION ("Declaration") is made effective the 11th day of September, 1996, by 3 A.H., Inc., a Kansas corporation (hereinafter referred to as the "Developer").

### WITNESSETH, THAT:

WHEREAS, Developer deems it desirable to adopt and establish covenants, conditions and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property (as hereinafter defined); and

WHEREAS, it is desirable to establish binding covenants, conditions and restrictions applicable to the Property through the proper development thereof and adequate maintenance and government of the Common Area and the rights of the Property Owners; and

WHEREAS, Quail Crossing Homeowners' Association, a nonprofit corporation, will be incorporated under the laws of the State of Kansas for the purpose of exercising some of the powers and functions aforesaid; and

WHEREAS, Developer will convey title to all of the Lots (as hereinafter defined) in the Property described below, subject to the covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, Developer hereby covenants, agrees and declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, which are hereby declared to be for the benefit of all of the Property described herein and the Owners thereof, their successors and assigns.

### ARTICLE I

#### DEFINITIONS

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

1.1 "Association" shall mean and refer to Quail Crossing Homeowners' Association, a nonprofit corporation to be incorporated under the laws of the State of Kansas, its successors and assigns.

1.2 "Board" shall mean and refer to the Board of Directors of the Association.

1.3 "Common Area" shall mean those portions of the Property to be owned by Developer or the Association for the common use and enjoyment of the members of the Association, as follows:

Reserves A, B, C, D, E, F, G, H, and I Quail Crossing Addition to  
Andover, Butler County, Kansas.

1.4 "Lot" shall mean and refer to each platted Lot within the Property upon which there may be constructed a single-family residence. It shall not mean or include any part of the Common Area.

1.5 "Member" shall mean and refer to every person or entity who holds membership in the Association.

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

1.7 "Property" shall mean and refer to all of the property described as:

Quail Crossing Addition to Andover, Butler County, Kansas.

1.8 "Structure" shall mean and include any thing or device (other than trees, shrubbery, hedges and landscaping), the placement of which upon any Lot may affect the appearance of such Lot, including, by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, covered or uncovered patio, swimming pool, tennis court, clothesline, radio or television antenna, fence, curbing, paving, wall more than two (2) feet in height, satellite dish, signboard or any temporary or permanent improvement to such Lot. "Structure" shall also include (i) 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 (ii) any change in the grade of any Lot of more than six (6) inches from that existing at the time of purchase by each Owner.

## ARTICLE II

### MEMBERSHIP AND VOTING RIGHTS

2.1 Membership. The Association shall have as Members only Owners. All Owners shall, upon becoming such, be deemed automatically to have become Members, and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from, the ownership of any Lot.

2.2 Voting Rights. All Members, so long as they shall qualify under this Article II, shall be entitled to vote on each matter submitted to a vote at a meeting of Members. Each Member of the Association shall have two (2) votes for each Lot owned by the Member, subject to the following exceptions and conditions:

A. When any such Lot is owned or held by more than one (1) Member as tenants in common, joint tenancy or any other manner of joint or common ownership or interest, such Members shall collectively be entitled to only two (2) votes relative to such Lot, and if such Members cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Lot.

B. Any Member who is in violation of this Declaration, as determined by the Board, shall not be entitled to vote during any period in which such violation continues. Any Member who fails to pay any assessments established pursuant to the terms hereof shall not be entitled to vote during any period in which any such assessments are due and unpaid.

C. Notwithstanding the foregoing, Developer shall be entitled to six (6) votes for each single Lot owned by it.

D. The Board shall adopt such Bylaws, consistent with the terms hereof, the Articles of Incorporation of the Association and the laws of the State of Kansas, as it deems advisable for any meeting of Members with regard to proof of membership in the Association, evidence of right to vote, the appointment and duties of inspectors of votes, registration of Members for voting purposes, voting by proxy and such other matters concerning the conduct of meetings and voting as it shall deem proper.

## ARTICLE III

PROPERTY RIGHTS IN THE COMMON AREA

3.1 Members' Easements of Enjoyment. Every Member shall have a right and easement to the Common Area, and such easement shall be appurtenant to and shall pass every Lot, subject to the following provisions and to the other provisions of this Declaration.

- A. The right of the Association to limit the number of guests of Members;
- B. The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area, including but not limited to the recreational facilities thereof;
- C. The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities and to mortgage the Common Area; provided that the rights of such mortgagees shall be subordinate to the rights of the Members;
- D. The right of the Association to suspend the use of the Common Area and any recreational facilities thereon by a Member and his family for any period during which any assessment against his or her Lot remains unpaid and delinquent, and for a period not exceeding thirty (30) days for any single infraction of the rules and regulations of the Association;
- E. To charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Area;
- F. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be determined by the Association; provided that such dedication or transfer shall not be effective unless authorized by a majority of Members present at a specially convened meeting called for such purpose; and
- G. The covenants and restrictions contained herein.

3.2 Delegation of Use. A Member's right of enjoyment in the Common Area shall automatically extend to all members of his or her immediate family residing on any part of the Property. No guests shall be entitled to exercise such right of enjoyment or to any use of the Common Area except as provided in, and subject to, such regulations as may be promulgated by the Board.

3.3 Waiver of Use. No Member may exempt himself or herself from personal liability for assessments duly levied by the Association, nor release the Lot owned by him or her from the liens and charges hereof, by waiver of the use and enjoyment of the Common Area and the facilities thereon or by abandonment of his or her Lot.

3.4 Title to the Common Area. Developer may retain the title to the Common Area until such time as it desires to convey title to the Association; provided, however, title shall be conveyed no later than the time that Developer relinquishes in full its right to designate the members of the Design Committee as referenced in Section 8.1 below. Notwithstanding anything to the contrary provided herein, Developer, prior to conveyance of the Common Area to the Association, and after such conveyance to the Association, may incorporate portions of the Common Area in adjoining Lots, from time to time.

## ARTICLE IV

### COVENANTS CONCERNING ASSESSMENTS AND LIENS

4.1 **General Assessments.** For the purpose of providing funds for the operation of the Association, and for the operation, maintenance, care and improvement of the Common Area, and to afford the Association (and Developer, during such time as it is performing the duties and powers of the Association pursuant to Section 6.1 B. hereof) the means and resources necessary to carry out its duties and functions. The Association shall have the right, in each year, assess against each Lot a general assessment, which general assessment shall subject each Lot to a lien to secure payment thereof. The general assessment may be paid annually, monthly or quarterly, as specified by the Association, from time to time. The initial assessment shall be payable on or before the first day of each month shall be in the amount of Ten Dollars (\$10.00) per calendar month (One Hundred and Twenty Dollars (\$120.00) per year) and shall commence June 1, 1996; assessments for any part of the year shall be prorated. The Association (or Developer) will notify all Owners stating the amount of the assessment and when payment is due; provided, in no event shall payment be due sooner than thirty (30) days following the notice of such assessment is mailed by the Association or Developer.

#### 4.2 **Basis of Assessment; Exemption; Transfer Assessment; Proration.**

A. All general assessments shall be made against the Owners on an equal basis for each Lot or fraction thereof owned by the Owner or Owners, except that in view of the substantial expenditures incurred by Developer in connection with the Common Area, Developer, and any properly licensed general contractor acquiring a Lot for the purpose of constructing a residence thereon and offering the same for sale, shall be exempt from imposition of any assessment, whether general or special, with respect to any Lot so long as Developer or such contractor holds legal title thereto (provided, the assessment exemption for such general contractors shall not extend beyond twelve (12) months from the date an applicable Lot is conveyed to such contractor).

B. At any time legal title to a Lot transfers, the transferee shall pay at the time of the closing of such transfer to the working capital of the Association, an amount equal to One Hundred Dollars (\$100.00); provided the requirement to pay such a fee shall not apply to either:

i) the transfer by Developer to an affiliated entity, or the transfer of Developer's interest as developer of the Property; or

ii) the transfer of title to any Lot to a properly licensed general contractor for purposes of constructing a residence thereon for the purpose of offering the same for sale.

C. In the event any Lot would be subject to a general or special assessment in any calendar year, if it were not for an exemption available under subparagraphs (A) and/or (B) immediately above, at such time as such exemption is no longer in effect during such calendar year, the applicable assessment shall be prorated for such year (based on the remaining portion of such year) and be paid by the then Owner.

#### 4.3 **Limitations on General Assessments.**

A. The maximum annual general assessment may not be increased for any subsequent year by the Association (or the Developer in lieu thereof), to an amount which is more than 30% compounded above the annual assessment for the previous year, without a vote of the membership of the Association.

B. The annual assessment for any year may be increased to an amount greater than that permitted by subparagraph (A) of this Section only by an affirmative vote of two-thirds of the vote of the Members in attendance, who are voting in person or by proxy, at meeting duly called for such purpose.



C. The Board, or, in lieu thereof, the Developer pursuant to Section 6.1 B. hereof, may not fix the annual assessment at an amount in excess of the amounts permitted hereunder.

4.4 Special Assessments. In addition to general assessments, the Association (or the Developer under Section 6.1 B. hereof) may, from time to time, at a regular meeting or a special meeting called upon notice for such purpose, establish a special assessment to be levied equally against each Lot for the purpose of providing additional funds (not available through general assessments) to carry out its duties and other functions and purposes contemplated hereunder. No such special assessment shall be valid unless two-thirds of the Members present, in person or by proxy, at the meeting duly called approve the same. Any special assessments shall become a lien against each individual Lot (subject to the exemptions specified in Section 4.2 above) in the same manner otherwise provided for in this Article. Further, the Association shall have the authority to establish and fix a special assessment on any Lot to secure the liability of the Owner of such Lot to the Association for any breach by such Owner of any of the provisions of this Declaration, which breach shall result in an expenditure by the Association for repair or remedy. Any special assessments shall be payable in full (unless a schedule for payment in installments is specified) on the first day of the second calendar month next following the date that the same shall be established by the Association.

4.5 Collection and Expenditures. The Association (or the Developer, so long as it is carrying out the duties and powers of the Association) shall have the sole authority to collect and enforce the collection of all general and special assessments provided for in this Declaration, and may, in addition to such assessments, charge and assess costs, including reasonable attorneys' fees, and penalties and interest for the late payment or nonpayment thereof. The Association shall have the authority to expend all monies collected from such assessments, costs, penalties and interest for the payment of expenses and costs in carrying out the duties, rights and powers of the Association as provided for in this Declaration and the Articles of Incorporation and Bylaws of the Association. However, the Association shall not be obligated to spend in any year all the sums collected in such year by way of general assessments, or otherwise, and may carry forward, as surplus or in reserves, any balances remaining; nor shall the Association be obligated to apply any such surpluses or reserves to the reduction of the amount of the assessments in the succeeding year, but may carry forward from year to year such surplus as the Board, in its absolute discretion, may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

4.6 Assessments and Liens; Delinquency. Thirty (30) days after any general or special assessment shall be due and payable, and unpaid or otherwise not satisfied, the same shall be and become delinquent and a lien on the Lot and shall so continue until the amount of said charge and assessment, together with all costs, penalties and interest as herein provided, has been fully paid or otherwise satisfied.

4.7 Notice of Delinquency. At any time after any general or special assessment against any Lot has become a lien and delinquent, the Association may record in the office of the Register of Deeds, Butler County, Kansas, a Notice of Delinquency as to such Lot, which Notice shall state therein the amount of such delinquency and that it is a lien, and the interest, costs (including attorneys' fees) and penalties which have accrued thereon, a description of the Lot against which the same has been assessed, and the name of the Owner thereof, and such Notice shall be signed by an officer of the Association. Upon payment or other satisfaction of said assessment, interest, penalties and costs in connection with which notice has been recorded, the Association shall record a further notice stating the satisfaction and the release of the lien thereof.

4.8 Enforcement of Liens. Each lien established pursuant to the provisions of this Declaration and which is specified in a Notice of Delinquency as hereinabove provided, may be foreclosed in like manner as a mortgage on real property as provided by the laws of Kansas. In any action to foreclose any such lien, the Association shall be entitled to costs, including reasonable attorneys' fees, and such penalties for delinquent charges and assessments as shall have been established by the Association.

4.9 Subordination to Mortgages. Each and every assessment and lien, together with any costs, penalties and interest reserved under this Declaration, shall be subordinate to the lien

of any valid bona fide mortgage which has been, or may hereafter be, given in good faith and for value on any interest of any Owner covered by this Declaration. Any subsequent Owner of any Lot purchased at foreclosure shall be bound by the restrictions, assessments and liens set out in this Declaration, not including, however, any assessment or lien arising prior to the foreclosure sale.

**4.10 Personal Liability.** In addition to the covenants and agreements heretofore set forth herein, each Owner of each Lot, by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each general or special assessment levied against such Lot during the period of ownership.

**4.11 Interest on Delinquent Assessments.** All assessment charges (general or special) which remain due and unpaid thirty (30) days after the same are due shall thereafter be subject to interest at the rate of fifteen (15%) percent per annum, or such other rate as may be established from time to time by the Board; provided, however, that such interest rate shall never exceed the maximum allowed by law.

## ARTICLE V

### USE, OCCUPANCY AND CONDUCT RESTRICTIONS

**5.1 General.** The Property is subject to the conditions, covenants, restrictions, reservations and easements hereby declared to ensure the best use and the most appropriate development and improvement of each Lot; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of the Property; to guard against the erection thereon of poorly designed or proportioned improvements and improvements built of improper or unsuitable materials; to ensure the best development of the Property; to encourage and secure the erection of attractive homes thereon, with appropriate locations thereof on building sites; to secure and maintain proper setback from streets and adequate free spaces between Structures; and, in general, to provide adequately for proper drainage from each Lot onto adjacent Lots and Common Area.

**5.2 Construction Requirements.** Unless approval is otherwise granted by the Design Committee, the following construction requirements shall be complied with:

**A.** As to all Lots within Block 1 of the Property, the applicable construction requirements shall be as follows:

Exterior walls of all buildings, Structures and appurtenances thereto constructed on any Lot shall be of brick, stone, stucco, wood siding, wood paneling, glass, glass blocks, vinyl or steel siding, or any combination thereof or as approved by the Design Committee. A one story residence shall contain not less than 1,000 square feet of finished floor area, exclusive of basements, porches and garages. A one and one half, two story residence and tri-level, quad-level or higher level residence, exclusive of basements, porches and garages, shall contain not less than 1,300 square feet of finished floor area. A bi-level residence, exclusive of basements, porches and garages, shall contain not less than 1,400 square feet of finished floor area. Each residence shall, unless otherwise approved by the Design Committee, include a poured concrete basement which shall contain a floor area comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of porches and garages. All roofs on all building improvements on any such Lot shall be Approved Composition. As used in this Declaration, "Approved Composition" shall mean composition roofing materials approved by the Design Committee from time to time.

**B. Flat Roofs and Windows.** No flat roof shall be permitted, except with the permission of the Design Committee. Window frames shall be wood, metal or vinyl or other composition materials as approved from time to time by the Design Committee.

**5.3 Rules and Regulations.** Each Owner shall obey and comply with all applicable public laws, ordinances, rules and regulations, and all rules and regulations now or hereafter



promulgated, as provided for in this Declaration. No activity which may be or become a nuisance to the neighborhood shall be carried on upon the Property.

5.4 Damage to Common Area, Etc., Prohibited. No Owner shall do or allow to be done any act which causes or threatens to cause any damage, encroachment or disrepair to the Common Area or the residence or Lot of any other Owner.

5.5 Single-Family Residences. No building shall be erected, altered, placed or permitted to remain on any Lot, other than one new single-family residence for private use, with a private garage and other Structures incidental to residential use, which are approved by the Design Committee. No prefabricated or modular buildings will be permitted to be constructed or installed on any Lot.

5.6 No Excavations. No excavations, except such as are necessary for the construction of a residence or improvements, shall be permitted on any Lot without written permission of the Design Committee.

5.7 No Storage; Trash. No trash, ashes, dirt, rock or other refuse may be thrown or dumped on any Lot or building site. No building materials of any kind or character shall be placed or stored upon any building site more than thirty (30) days before the commencement of construction of a residence or improvements, and then such materials shall be placed within the property lines of the building site upon which they are to be erected and shall not be placed in the street or between the curb and property line.

5.8 No Businesses Allowed. Except as otherwise specified in this Declaration or as authorized by the Board (or the Developer, so long as it is performing the functions of the Association), no retail, wholesale, manufacturing or repair business of any kind, nor so-called home occupations, shall be permitted on any Lot or in any residence or appurtenant Structure erected thereon, even though such activity does not include the employment of any additional person or persons in the performance of such services. The following home occupations are hereby approved: residential home building contractors; Amway and Avon sales representatives; child care; hair dressers; and realtors.

5.9 Temporary Buildings. Except as authorized by the Board (or the Developer, so long as it is performing the functions of the Association), no basement, tent, shack, garage, barn or outbuilding erected on a Lot covered by this Declaration shall at any time be used for human habitation, temporarily or permanently, nor shall any Structure of a temporary character be used for human habitation.

5.10 Used Houses; Trailers. No used, secondhand or previously erected house or building of any kind can be moved or placed, either in sections or as a whole, upon the Property, nor shall any trailer be moved, placed or permitted to remain upon a Lot subject to this Declaration; provided that Developer may install for administrative and sales purposes a trailer or trailers upon a Lot(s).

5.11 Animals. No birds, animals or insects, except dogs, cats or other household pets, shall be kept or maintained on any Lot. 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 Board. The Board 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, and the Owners shall strictly comply therewith.

5.12 Signs. Except as authorized by the Board, and except for those installed by Developer, its marketing representatives or builders or contractors as authorized by Developer, no signs, advertisements, billboards or advertising Structures of any kind may be erected or maintained on any of the Lots; provided, however, that permission is hereby granted for the erection and maintenance of not more than one temporary, unlighted, unanimated signboard on each building site as sold and conveyed, which signboard shall not be more than ten (10) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the Lot and residence upon which it is erected and improvements thereon, if any.

5.13 Sight Lines. No fence, masonry wall, hedge or mass planting shall be permitted to extend beyond the minimum front building setback lines established on the plat of the Property. No hedge, shrub, mass planting or tree shall be allowed by the Owner to obstruct sight lines at any corner. Trees, shrubs and other plants which die shall be promptly removed from the Property.

5.14 Antennas. Except as authorized by the Design Committee, there shall not be erected any external television or radio antennas or permanent clothesline structures, and no Owner shall erect any Structures, either permanently or temporarily, upon any of the Common Area; provided, notwithstanding the foregoing, an Owner may install within his or her Lot a television satellite dish having a diameter of not more than 24 inches, so long as the location of such dish is satisfactory to the Design Committee.

5.15 Trailers. Except as authorized by the Board, no automobile, truck, motorcycle, motorbike, boat, house trailer, boat trailer or trailer or any other vehicle of any type or description may be stored upon any of the Common Area, nor may any boat, boat trailer, house trailer, camper, camper trailer or similar items be stored in the open on any Lot.

5.16 No Joyriding. Except as otherwise authorized by the Board, motor scooters, minibikes or similar vehicles shall be operated for transportation only, and no joyriding on the streets, any Lot or the Common Area shall be allowed except on a designated bike or cycle trail.

5.17 Requirement to Keep Lot in Good Order and Repair. Each Owner (other than Developer; provided it shall cause all Lots owned by it to be mowed periodically) shall keep all Lots owned by it, and all improvements therein or thereon, in good order and repair, including, but not limited to, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management in relation to a quality residential neighborhood such as will exist in the Property. If, in the opinion of the Board, any Owner fails to perform the duties imposed by the preceding sentence, the Board, after approval by a two-thirds decision of the Board, and after fifteen (15) days' written notice to Owner to remedy the condition in question, shall have the right, through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements, and the cost thereof shall be a binding personal obligation of such Owner, and the Board may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article IV hereof.

5.18 Division of Lots Prohibited. Except as authorized by the Design Committee, no platted Lot shall be split or divided into more than one Lot or building site, but more than one Lot may be used as a building site for one dwelling.

5.19 Trees. Except as authorized by the Board, no tree having a diameter of six (6) 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 Design Committee, other than those which are diseased or materially damaged. The Association, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources upon the Property. Developer or the Association may designate certain trees, regardless of size, as not removable without written authorization.

5.20 Requirement to Plant Lawn, Etc. As soon as practicable after completion of a dwelling on a Lot, the Owner thereof shall plant a lawn and at least eight (8) perennial shrubs and/or bushes and trees on the Lot, with a minimum of three (3) trees being planted in the front yard of the Lots and the trunk of each tree being a minimum of two (2) inches in diameter.

5.21 No Disturbances of Streams. No lake, pond, stream or water drainage facilities, natural or erected, shall be disturbed other than by Developer or the Association.

5.22 Boating. Except as approved from time to time by the Association (or the Developer under Section 6.1 B.), no boat, raft, canoe or surfboard shall be operated or stored upon any body of water, if any, within the Common Area.



5.23 Fishing. Fishing in any body of water, if any, within the Common Area will only be permitted at such times and at such places as may be determined by the Association (or the Developer under Section 6.1 B.) pursuant to rules and regulations promulgated from time to time concerning such use.

5.24 Fences.

A. Developer may, and hereby reserves the right to, in its sole discretion, construct and install a fence, wall or entrance treatment of a style and of materials satisfactory to the Developer, in its sole discretion, within any of the fence or wall easement areas or entry areas shown on the plat of the Property, or established by other easement instruments.

B. Except as provided in paragraph A above, all Lots other than Lake Lots may utilize fences made of black wrought iron, wood or both, provided the same shall not exceed six feet in height. No fences shall be constructed or maintained on any Lake Lot, except for privacy fences immediately adjacent to patios which are appurtenant to a residence, and except for black wrought iron fences which do not exceed six feet in height and which do not materially obstruct the passage of light and air. Lake Lots shall mean Lots with a common boundary with Reserve D of the Common Area.

C. All fences shall be approved by the Design Committee prior to construction or installation on any Lot.

5.25 Model Homes and Real Estate Offices. Notwithstanding anything to the contrary appearing elsewhere in this Declaration, any Lot owned by Developer, or any person or entity so authorized by Developer, may be used for a model home or for a real estate or administrative office pertaining to the development of the Property (including temporary, mobile, modular, prefabricated or a permanent Structure) until all the Lots have been sold to consumers for construction of residences thereon.

5.26 Drainage. Upon the completion of construction of improvements to each Lot, the Owner of such Lot shall cause such Lot to be graded so as to strictly comply with drainage guidelines, standards and plans concerning water drainage from such Lot to other Lots and/or the Common Area, as such guidelines, standards and plans are established by the City and County within which the Property is located, Developer or the Design Committee. The Board and persons designated by the Board shall have the right to enter upon any Lot upon reasonable advance notice to the Owner thereof for the purpose of determining whether the Lot is in compliance with such drainage guidelines, standards and plans. A determination by the Board concerning whether or not a Lot or Common Area is in compliance with such guidelines, standards and plans, shall be final and binding on all Owners and, provided, so long as Developer owns a Lot, the Developer (due to the unique expertise of its owners, managers, and/or officers) shall have the right to override any decision of the Board under this Section 5.26 on the request of any Owner and, in the event Developer so overrides a decision of the Board, any subsequent reference in this Section 5.26 to the Board shall mean the Developer. In the event and time the Board determines that a Lot is not in compliance with the aforesaid guidelines, standards and plans, the Board shall give notice to the Owner thereof and demand that such corrective action be taken as is necessary to achieve compliance. If thirty (30) days after the notice of such violation, or such additional time as may be specified by the Board, the Owner of such Lot shall have not have taken reasonable steps to correct the same, the Board shall have the right, through its agents and contractors, to enter the Lot and/or Common Area and to take such steps that may be necessary to bring the same into compliance. The Owner of the Lot so corrected shall reimburse the Association for the costs of such correction together with 20 percent of such amount. In the event such Owner fails to pay such reimbursement in full within ten (10) days following demand thereof, the Association shall establish a special assessment applicable to such Lot for the costs thereof and enforce the same as provided in Article IV hereof. Pending establishment of the Board, Developer may fully perform the functions of the Board under this Section 5.26.

5.27 No Rights Beyond Property. Notwithstanding the proximity of lakes or other amenities to the Common Area and/or Property, no Owner shall have any right of access, use or enjoyment of any lakes or other amenities outside the Property.

5.28 Pipeline. A pipeline crosses a portion of the Property, as shown by the Right-of-Way Grant originally granted to Kanab Pipe Line Company and Agreement and Partial Release of Right-Of-Way between Developer and Kanab Pipe Line Operating Partnership, L.P. Each Owner shall comply with any provisions of the aforesaid documents which are applicable to such Owner's Lot and the Association shall comply with any such provision pertaining to the Common Area, which documents, among other things, limit the right of an owner of a Lot to construct fencing and other improvements within the pipeline right-of-way. Each Owner acquiring a Lot acknowledged by acceptance of a deed thereto, that such Owner has satisfied himself or herself concerning the pipeline and the rights of the owner and operator of such pipeline.

## ARTICLE VI THE ASSOCIATION

### 6.1 Powers and Duties.

A. The Association shall have the rights and powers as set forth in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit corporation, and it shall perform each and every duty required of it by this Declaration.

B. Developer may carry out all of the duties and powers herein delegated to the Association and the Board so long as it owns a Lot, after which time management shall be turned over to the Association or Board, as the case may be, which shall then exercise the powers and duties herein set out; provided, however, that the Developer may, at its option, at any earlier time, partially or wholly transfer all or any part of such duties and powers to the Association or the Board. In the event of a transfer of a portion of Developer's powers and duties by the Developer to the Association or the Board, the Developer shall retain all other powers and duties which are not so specifically transferred. The Association and Developer shall cooperate fully in the transition of management.

C. The Association shall own, maintain, mow and keep clean the Common Area. It further shall maintain, repair and/or replace the decorative entrance treatments, fence(s) and walls erected and installed by Developer or the Association.

D. The Association shall maintain such insurance on the Common Area and facilities thereon as it deems necessary and advisable.

E. The Association may improve the Common Area in any manner that it shall find to be necessary, desirable or beneficial to the interest of the Common Area and the Members.

F. 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.

G. The Association, through the Board, 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.

H. The Association shall be empowered to determine the manner and extent of operating, maintaining, improving, restoring, mowing, trimming and keeping clean the Common Area.

6.2 ions and Expenses. The Association shall establish such committees as may be provided for in its Bylaws, and 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 concerning the Property, and Developer has been assigned the right to perform such functions.

6.3 Taxes and Assessments. Each Owner shall be obligated to pay the taxes or assessments assessed against such Owner's Lot and personal property located thereon.

6.4 Repair and Restoration of Improvements on Common Area. Should any improvements on the Common Area, or any part or portion thereof, be damaged or destroyed by fire or other casualty or by intentional mischief, the Association shall be responsible for the cost and expense of repair and restoration, and, so long as there are sufficient insurance proceeds collected as a result of such damage or destruction, the same shall be done substantially in accordance with the original plans and specifications for the improvement of same. The repair and restoration work referred to in this section shall be commenced promptly after the happening of the destruction or damage occasioning the same, and once commenced, the same shall be pursued diligently to completion.

#### ARTICLE VII

##### EASEMENTS AND ACCESS CONTROL

7.1 Public Utility and Floodway Easements Dedicated. Easements for the installation and maintenance of all public utilities and for floodway on Lots subject to this Declaration are dedicated as shown on the recorded Plat of the Property.

7.2 Easements in Favor of Developer and Association. Developer specifically reserves unto itself, its successors and assigns, and for the Association, in connection with the use, operation and maintenance of the Common Area, a perpetual, nonexclusive easement and right-of-way over the Lots and Common Area for the purpose of constructing, maintaining, repairing, replacing and rebuilding water sprinkler systems, including water lines, water wells, sprinkler controls, and electric meters and lines, underground pipelines, drains and/or mains for the purpose of transporting gas, water, sewerage and electricity over, across and through such Lots and Common Area, together with the right to excavate and level ditches and/or trenches for the location of said wells, lines, pipes, drains and/or mains. Additionally, Developer specifically reserves unto itself, its successors and assigns, and for the Association, a perpetual, non-exclusive easement and right-of-way to enter upon any Lot as reasonably necessary in order to construct, install, erect, maintain, improve, repair and/or replace any entrance treatment, fence, wall, walkway, water sprinkler system (including water wells, sprinkler controls, and electric meters and lines associated therewith), or any signage pertaining to or serving the Common Area or the residential development within any wall, utility and/or drainage easement shown on the current or any future plat of the Property, or located on a Lot but, due to oversight, not actually located in the appropriate easement area.

#### ARTICLE VIII

##### DESIGN COMMITTEE, ARCHITECTURAL CONTROL

8.1 Membership. The original members of the Design Committee shall be up to three (3) persons, to be appointed by Developer. Upon the death or resignation of any member of the Design Committee, or in the event Developer desires to remove any member, Developer shall appoint a successor, unless at such time Developer has relinquished its rights hereunder as hereinafter provided. Following Developer's relinquishment of its right to designate the members of the Design Committee, the Association shall have full authority to designate all successor members. The decision of a majority of the committee shall be binding; provided, the Design Committee may delegate its rights and responsibilities hereunder to one or more of its members from time to time. Developer may relinquish its rights under this paragraph by executing and recording in the real estate records a written instrument giving notice of its intent to do so, and providing a copy thereof to an officer of the Association; in such event, the Association shall have the authority of Developer under this paragraph. Developer shall relinquish its rights to appoint the members of the Design Committee on or before the date it no longer owns a Lot. The Design Committee may delegate its rights and responsibilities on a



limited basis to the Board from time to time without relinquishing its rights and powers hereunder beyond the terms of such limited delegation.

**8.2 Approval Required of Plans and Specifications.** Except as otherwise specifically provided in this Declaration, no Structure shall be commenced, erected, placed, moved on or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any manner which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Lot, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the Design Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Design Committee, including, as requested by such committee, (i) a site plan of the Lot or Lots, showing the nature, exterior color scheme, kind, shape, size, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (ii) a finished grade plan for the particular Lot or Lots.

**8.3 Decision Final.** Whatever shall be the decision of the Design Committee hereunder, its decision shall be final and conclusive.

**8.4 Rules and Statements of Policy.** The Design Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Design Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statements shall be deemed to bind the Design Committee to approve or disapprove any feature or matter subject to approval or to waive the exercise of the Design Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the Design Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or Lots. Approval of any such plans and specifications relating to any Lot, however, shall be final as to that Lot, and such approval may not be revoked or rescinded thereafter, provided that (i) the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this Declaration, and (ii) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question. In the event that the Design Committee fails to approve or disapprove any plans and specifications as herein provided within thirty (30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

**8.5 Violation.** If any Structure shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Design Committee pursuant to the provisions of this Article VIII, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article VIII and without the approval required herein, and, upon written notice from the Design Committee, any such Structure so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use shall be terminated, so as to extinguish such violation. If, fifteen (15) days after the notice of such a violation, 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 shall have the right, through its agents and contractors, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the Association may establish a special assessment on such Lot for the cost thereof and enforce the same as provided in Article IV hereof.

**8.6 No Liability.** Neither the Design Committee, Developer, the Association, nor any officer, director, member, agent or employee thereof, shall be liable to any owner or to any

person, firm, corporation or other entity for any damages arising from any performance or nonperformance of any duties, responsibilities or functions under this Declaration, including but limited to this Article and Section 5.26 hereof.

#### ARTICLE IX

##### NOTICE OF POSSIBLE SPECIAL ASSESSMENTS AND WATER ENCROACHMENT

9.1 Special Assessments. Notice is hereby given to each purchaser of a Lot that special assessments may be spread by the City of Andover, Kansas, to Lots in the future, due to the installation of streets, sewers, sidewalks, etc.

9.2 Water Encroachment. Notice is hereby given to anyone acquiring a Lot that due to the grading and drainage of such Lot (which is necessary to enhance the views from residences, particularly those with "walk-out" or "view-out" basements), at times following considerable amounts of rainfall, water may encroach into the yard areas within such Lot. Water may accumulate in areas to the rear of the Lot, which has been graded at lower elevations to provide drainage, or if the Lot is adjacent to a lake, stream or other waterway, water from such areas may spill over into the Lot as a result of such rainfall. Depending upon how much water accumulates on the Lot and how long it remains, damage could occur to the yard, trees, vegetation, or to fences, gazebos, patios, playground equipment or other improvements or installations within the yard area. Neither Developer, building contractor or brokers involved in the development of the residential area, sale of the Lot, or construction of a residence on a Lot, shall have any liability or responsibility for any such damage resulting from such water encroachment.

#### ARTICLE X

##### ADDITIONAL LAND

Developer may, from time to time, during the fifteen (15) year period following the date hereof, annex additional real property, including additional Common Areas, into the Property, and thereby subject the same to the terms, provisions and conditions of this Declaration, by the execution and filing for recordation with the Register of Deeds of the County in which the Property is located, of an instrument expressly stating an intention to so annex and describing such additional property to be so annexed. During the fifteen year period commencing with the date of the recordation of this Declaration, Developer, its successors and assigns, may annex such additional real property in its absolute discretion. From and after the expiration of such fifteen year period, such additional land may be annexed; provided that such annexation is approved by a majority of the Members of the Association in attendance at a special or annual meeting of the Members.

#### ARTICLE XI

##### MISCELLANEOUS

11.1 Provisions Binding on Grantees. The Association and each grantee hereafter of any part or interest in the Property, under this Declaration, and any purchaser under any grant, contract of sale or lease covering any part or portion of such Property, accepts the same subject to all of the restrictions, liens and charges and the jurisdiction rights and powers of the Association and Developer provided for in this Declaration.

11.2 Interpretations of Restrictions. In 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 residence 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.

**11.3 Construction and Validity of Restrictions.** All of the restrictions, conditions, covenants, reservations, liens and charges 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, covenants, reservations, liens or charges, or any part thereof, are invalid or for any reason become unenforceable, no other restriction, condition, covenant, reservation, lien or charge, or any part thereof, shall be affected or impaired.

**11.4 Assignment of Powers.** Any and all rights and powers of Developer provided for in this Declaration and any modification or amendment hereof may be delegated, transferred, assigned, conveyed or released by Developer to any third party and/or to the Association. The Developer's assignee shall accept the same upon the recording of a notice thereof, and the same shall be effective for the period and to the extent stated therein. Upon the effective date of such assignment, the assigning party shall be released of any and all liabilities of whatever nature arising out of acts or omissions prior to the effective date of the assignment.

**11.5 Waiver and Exceptions.** The failure by the Association, Developer, any Owner or any other person to enforce any of the restrictions, conditions, covenants, reservations, liens or charges 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, reservation, lien or charge.

**11.6 Titles.** All titles used in this Declaration are intended solely for convenience of reference, and the same shall not affect that which is set forth in the terms and conditions of this Declaration nor the meaning thereof.

**11.7 Singular and Plural, Masculine and Feminine.** The singular shall include the plural and the plural the singular, unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine and neuter, as the context requires.

**11.8 Successors-in-Interest.** Reference herein to either the Association or Developer shall include its respective successor, and each such successor shall succeed to the rights, powers and authority hereunder of its predecessor, whether by appointment or otherwise.

**11.9 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 the Association, Developer, and the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty-five (35) years from the date hereof, after which time the covenants, conditions and restrictions hereof shall be automatically extended for successive periods of one (1) year each, unless an instrument, signed by Owners of not less than seventy-five percent (75%) of the Lots, has been recorded, agreeing to abolish or change these covenants, conditions and restrictions, in whole or in part.

**11.10 Amendments.** Amendments to this Declaration may be made by Developer, or its successors and assigns, in its sole discretion, so long as Developer (or its successors and assigns) retains ownership of a minimum of fifty percent (50%) of the Lots within the Property. Following the date Developer, its successors and assigns, no longer owns a minimum of fifty percent (50%) of the Lots, any provision contained in this Declaration may be amended, repealed, or additional provisions added to this Declaration, as follows:

A. **Notice.** Notice of the subject matter of the proposed amendment shall be included in a notice to the Owners of a meeting of the Association, at which the proposed amendment shall be considered.

B. **Resolution.** A resolution adopting a proposed amendment may be proposed by the Board or Developer. Unless otherwise specified in this Declaration, any proposed amendment must be approved by the Owners casting not less than two-thirds (2/3) of the aggregate number of votes cast by the Owners present at such meeting. Such



votes may be cast in person or by proxy as provided for herein and in the Bylaws of the Association.

A copy of each amendment provided for in this section shall be filed of record in the Register of Deeds for the County in which the Property is located. With respect to amendments, following the date the Developer no longer owns a minimum of fifty percent (50%) of the Lots, the Secretary of the Association shall file a certificate along with such amendment, certifying that the meeting at which the vote was taken was either the annual meeting of the Association or a special meeting of the Association, duly called in accordance with the Bylaws of the Association, and that the proper number of votes approving the amendment was obtained. Such certificate will be filed as part of or with such amendment.

Notwithstanding the foregoing, so long as Developer owns three (3) Lots, any such amendment shall require the written consent of Developer, and, further, no amendment materially impairing the rights of any mortgagee shall be binding on such mortgagee unless consented to in writing by such mortgagee.

**11.11 Mortgage Protection Clause.** No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien 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 effective against any Owner whose title is derived through foreclosure sale or deed in lieu thereof.

**11.12 Enforcement and Arbitration.**

A. The covenants set forth herein shall run with the land and bind each Owner, its successors and assigns, and all parties claiming by, through or under each Owner, and shall be taken to hold, agree and covenant by the Owner of each Lot, its successors and assigns, to conform and observe this Declaration and each and every term and condition hereof (but no restrictions herein set forth shall be personally binding upon any corporation, person or persons, except in respect to breaches committed during the term of its, his or their ownership of a Lot).

B. The Developer or the Owner or Owners of any of the Property or the Association shall have the right to seek enforcement of or to prevent the breach of the terms and conditions set forth herein. Any action relating to any rights and obligations arising under, or in connection with, this Declaration, including, but not limited to, an action to seek enforcement of or to prevent the breach of any of the covenants and restrictions contained herein, shall be resolved solely and exclusively by arbitration in accordance with the Kansas Uniform Arbitration Act (the "Act"), as modified from time to time, in accordance with the procedure set out below. However, the provisions of this Section 11.12 shall not either prevent a party from obtaining a temporary injunction from a court of general jurisdiction pending designation of the arbitrators, or from foreclosure of any liens established pursuant to this Declaration. After the arbitrators have been selected and accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. The arbitration procedure is as follows:

i) Any of the aforementioned parties may request arbitration of any matter in dispute. The party requesting arbitration shall do so by giving written notice to the other party, specifying in the notice the name and address of the person designated to act as arbitrator on the first party's behalf. Within ten (10) days after the service of this notice, the other party shall give notice to the first party, specifying the name and address of the person designated to act as arbitrator on the second party's behalf. If the second party fails to notify the first party of the appointment of such party's arbitrator within the time specified, then the first arbitrator appointed shall appoint the second arbitrator. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed and the two arbitrators shall together appoint a third arbitrator. If the two arbitrators are unable to agree upon that appointment within twenty (20) days after the appointment of the second arbitrator, then the parties to such dispute may apply,

upon notice to the other party, to the Kansas District Court located in the County in which the Property is located for the appointment of the third arbitrator. In rendering their award, the arbitrators shall have no power to modify any of the covenants, conditions and restrictions contained herein.

ii) The arbitrators so selected must be at least thirty (30) years old and may not be an Owner or occupant of a Lot.

iii) The arbitrators may grant any remedy or relief the arbitrators deem just and equitable and within the scope of the agreement of the parties. The arbitrators shall specifically have the power to order equitable relief, including, but not limited to, injunctions or specific performance. The award resulting from any arbitration hereunder shall be final and binding on the parties and judgment may be entered on the award and shall be enforced in accordance with the laws of the State of Kansas.

iv) Each party shall pay the fees and expenses of the original arbitrator appointed by that party, and the fees and expenses of the other arbitrator and all other expenses of the arbitration shall be borne equally by the parties. Each party shall bear the expense of his own counsel, experts, and preparation and presentation of proof.

11.13 Exclusion of Applicability. The Developer and its assigns shall have the power at any time to waive any or all of the restrictions or covenants contained herein as to the Lots which are unimproved and under its ownership or the ownership of its assigns or licensed residential construction contractors at the time of such waiver. The Developer specifically reserves the right to carry on its business in the Property, so long as it owns a Lot, including, but not limited to, maintaining sales offices, model homes, business offices and other facilities necessarily convenient for the business of Developer.

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

St. of Kansas - Butler Co. } SS  
Recorded September 11, 1996  
At 3:50 P.M. # 9399  
Book 785 Page 299  
(Fees) \$36.00 (16)  
*Marcia McCoy*  
Marcia McCoy-Register of Deeds

DEVELOPER  
3 A.H., INC.

By *Jay W. Russell*  
Its *Vice President*  
*Jay W. Russell*

STATE OF KANSAS )

)ss:

COUNTY OF SEDGWICK )

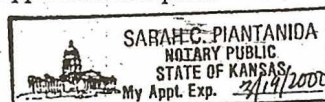
RTN: City of Andover  
(4) P.O. Box 295  
Andover, KS 67002

BE IT REMEMBERED, that on this 11th day of September, 1996, before me a Notary Public in and for the County and State aforesaid, personally appeared Jay W. Russell, the Vice President of 3 A.H., Inc., a Kansas corporation, personally known to me to be such officer and the same person who executed, as such officer, the above and foregoing instrument in writing on behalf of said corporation 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 official seal the day and year last above written.

*Sarah C. Piantanida*  
NOTARY PUBLIC

My Appointment Expires:



89407

- 16 -

BOOK 785 PAGE 299  
16

revised Quail Crossing Add. Coven. Concerning Pipeline Pl. 893 Pg. 171

### QUAIL CROSSING ADDITION COVENANT CONCERNING PIPELINE

This Quail Crossing Addition Covenant Concerning Pipeline made this 30 day of August, 1996, by Quail Crossing, L.L.C., a Kansas limited liability company ("Developer").

WHEREAS, Developer is the owner of property legally described as Quail Crossing Addition to Andover, Butler County, Kansas ("Addition"), which Addition includes residential lots (hereinafter the "Lots"); and

WHEREAS, Kaneb Pipeline Operating Partnership, L.P. ("Kaneb") owns and operates an underground pipeline ("Pipeline") which exists within the Addition; and If you use Skip Numbering on the last paragraph of the page, you have turned automatic paragraph numbering off, and any paragraphs following it will not be numbered

WHEREAS, that streets for use in the residential development will be installed over portions of the Pipeline; and

WHEREAS, Kaneb has required the City of Andover, Kansas ("City") to execute the letter agreement attached hereto as Exhibit "A" providing that if in the exercise of Kaneb's rights under its right-of-way grant, an amended, facilities owned by the City are damaged, disturbed, interfered with, destroyed, the City is to hold Kaneb harmless; and in order to induce the City to execute the aforementioned letter in favor of Kaneb, the City has requested assurances that the fee title owners of the Lots shall reimburse the City for any sums it is required to pay Kaneb as a result of such letter.

NOW, THEREFORE, Developer hereby adopts and establishes the covenants contained herein and declares that the Lots shall be held, sold and conveyed subject to the following covenants, which are hereby declared to be applicable to all of the Lots and the owners thereof, their successors and assigns:

1. In the event the City is required to pay any costs, or incurs any expenses, from time to time with respect to the City's obligation to Kaneb as referred above, the City shall give written notice to the record title owners of all Lots, advising them concerning the costs paid by the City. The fee title owner(s) of each Lot shall be required to reimburse the City in an amount equal to the Proportionate Share of such expenditures applicable to such owners Lot. As used in the preceding sentence, "Proportionate Share" shall mean the total amount of such expenditures by the City, divided by the number of Lots in the Addition. Initially there are to be 71 Lots in the Addition but it is possible there could be some change in the number of Lots. The owner of each Lot shall promptly remit payment to the City of its Proportionate Share of such City expenditures within 90 days following receipt of such notice.

2. In the event the City does not timely receive full payment from the owners of any Lot or Lots as required in paragraph 1 above, the appropriate representative of the City shall



notify the County Clerk for Butler County, Kansas, of the delinquency of such payment along with the name of the delinquent Lot owner(s) and the legal description of the applicable Lot. The County Clerk is authorized and directed to spread such amount as a special tax with respect to the Lots for which full payment has not been timely made; to be added to the tax rolls in the following year. As a special tax, Butler County shall have all rights and remedies available under applicable law to assess and collect the same and thereafter shall remit payment to the City.

a. Each grantee of a Lot and any purchaser under any contract of purchase covering any part of a Lot, accepts the covenants contained herein.

b. The covenants contained herein shall run with the land and inure to the benefit of, and be enforceable by, the City for so long as the City's obligation to Kaneb as referenced herein remains in effect.

c. This instrument may only be amended in writing, signed by the City and the owners of the Lots.

d. No breach of the covenants contained herein, no enforcement of any rights by the City or Butler County, Kansas, shall defeat or render invalid any mortgage made and conveyed and for value.

e. It is anticipated that land adjacent to the Addition will be platted as part of the Quail Crossing residential development. In connection with the final approval of such additional platting, such other instrument as is satisfactory to the City shall be recorded to cause all residential lots included in the additional property added to the Quail Crossing residential development to be considered "Lots" as defined herein, for which a Proportionate Share shall be paid as required herein.

IN WITNESS WHEREOF, Developer has executed this instrument as of the day and year first above written.

QUAIL CROSSING, L.L.C.

By

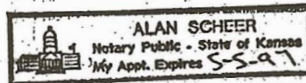
Title Member

Jay W. Russell

STATE OF KANSAS            )  
                                      ) ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this 30 day of August, 1996, before me a Notary Public in and for the County and State aforesaid, personally appeared James W. Russell a member of Quail Crossing, L.L.C., a Kansas limited liability company, personally known to me to be such member and the same person who executed, as such member, the above and foregoing instrument in writing on behalf of said corporation 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 official seal the day and year last above written.



Alan Scheer  
NOTARY PUBLIC

My Appointment Expires:

May 5, 1997

RTN: City of Andover  
(4) P.O. Box 295  
Andover, KS 67002

St. of Kansas - Butler Co. } ss  
Recorded September 11, 1996  
At 3:50 P.M. #9397  
Book 785 Page 297  
Fees \$10.00 (3)  
Marcia McCoy  
Marcia McCoy-Register of Deeds

**ANNEXATION OF ADDITIONAL LAND AND  
FIRST AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR QUAIL CROSSING ADDITION**

THIS ANNEXATION OF ADDITIONAL LAND AND FIRST AMENDMENT TO COVENANTS, CONDITION AND RESTRICTIONS FOR QUAIL CROSSING ADDITION ("Annexation/Amendment"), is made this 19 day of January, 1999, by Quail Crossing LLC, a Kansas limited liability company ("Developer").

**WITNESSETH:**

WHEREAS, Developer filed with the Register of Deeds Office, Butler County, Kansas, that certain Declaration of Covenants, Conditions and Restrictions for Quail Crossing Addition ("CCRs") on the 11th day of September, 1996, recorded at Book 785, Page 299; and

WHEREAS, pursuant to Article X of the CCRs, Developer has the power and authority to annex additional real property, including additional Common Areas, to the Property subject to the CCRs, and thereby subject the same to all the terms, provisions and conditions of the CCRs; and

WHEREAS, Developer has the power and authority to amend the CCRs pursuant to Section 11.10 thereof; and

WHEREAS, Developer desires to annex additional real property to the CCRs, and to further amend the CCRs as provided herein.

NOW THEREFORE, Developer hereby annexes the real property described herein to that land already subject to the CCRs, and to amend the CCRs as provided herein, and declares that the annexed real property described in paragraph 1 below shall be subject to the CCRs, and that the CCRs, as amended, shall run with said annexed real property and be binding on all parties having any right, title, or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

1. Annexation of Real Property. Pursuant to Article X of the CCRs, Developer hereby annexes the real property described below as part of the Property, and thereby subjects it to all of the terms, provisions, and conditions of the CCRs. The real property to be annexed as part of the Property is described as:

Final P.U.D. Plan - Phase 2, Quail Crossing Addition to Andover, Butler County, Kansas

2. Amendments to Covenants, Conditions and Restrictions. The CCRs are amended as follows: The definition of the Common Area contained in paragraph 1.03 the CCRs is amended to include the following reserves:

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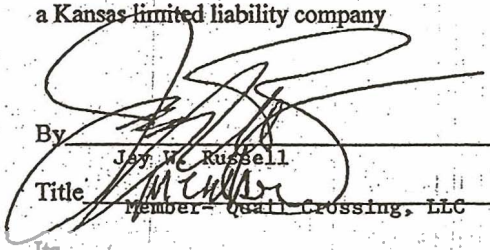

h2 COMP  
NUM  
CMP  
SHOW



Reserves A and B, Final P.U.D. Plan -- Phase 2, Quail Crossing  
Addition to Andover, Butler County, Kansas.

IN WITNESS WHEREOF, Developer has executed this Annexation/Amendment the day  
and year first above written.

QUAIL CROSSING, LLC,  
a Kansas limited liability company

By  \_\_\_\_\_  
Jay W. Russell  
Title  \_\_\_\_\_  
Member - Quail Crossing, LLC  
Its \_\_\_\_\_

STATE OF KANSAS )  
 ) ss:  
COUNTY OF SEDGWICK )

BE IT REMEMBERED, that on this 19 day of January, 1998, before me, a Notary Public in and for the County and State aforesaid, personally appeared Jay W. Russell, a Member of Quail Crossing, LLC, a Kansas limited liability company, who is personally known to me to be such officer and the same person who executed, as such officer, the above and foregoing instrument in writing on behalf of said corporation, 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 seal the day and year last above written.

My appointment expires:

May 5, 2001

Alan Scheer  
NOTARY PUBLIC



St. of Kansas - Butler Co. } ss  
Recorded March 30, 1999  
At 2:35 P.M. # 3885  
Book 893 Page 169  
Fees \$10.00 (3)  
Marcia McCoy  
Marcia McCoy - Register of Deeds

RTN-Butler County Title (11)

3.

RTN-Butler County Title (11)  
**MODIFIED QUAIL CROSSING ADDITION  
COVENANT CONCERNING PIPELINE**

St. of Kansas - Butler Co. } SS  
Recorded March 30, 1999  
At 2:35 P.M. # 3887  
Book 893 Page 171  
Fee \$10.00 (3)  
*Marcia McCoy*  
Marcia McCoy-Reg. Sec. of Deeds

This Modified Quail Crossing Addition Covenant Concerning Pipeline made this day of January, 1999, by Quail Crossing, LLC, a Kansas limited liability company ("Developer").

WHEREAS, Developer is the owner of property legally described as Final P.U.D. Plan - First Phase, Quail Crossing Addition to Andover, Butler County, Kansas ("First Addition"), which First Addition includes residential lots; and

WHEREAS, Developer is the owner of property legally described as Final P.U.D. Plan - Phase 2, Quail Crossing Addition to Andover, Butler County, Kansas ("2<sup>ND</sup> Addition"), which 2<sup>ND</sup> Addition includes residential lots (which lots, together with the lots in the First Addition are hereinafter referred to as the "Lots"); and

WHEREAS, Kaneb Pipeline Operating Partnership, L.P. ("Kaneb") owns and operates an underground pipeline ("Pipeline") which exists within the Addition; and

WHEREAS, that streets for use in the aforesaid residential developments will be installed over portions of the Pipeline; and

WHEREAS, Kaneb has required the City of Andover, Kansas ("City") to execute a letter agreement providing that if in the exercise of Kaneb's rights under its right-of-way grant, as amended, facilities owned by the City are damaged, disturbed, interfered with, destroyed, the City is to hold Kaneb harmless; and in order to induce the City to execute the aforementioned letter in favor of Kaneb, the City has requested assurances that the fee title owners of the Lots shall reimburse the City for any sums it is required to pay Kaneb as a result of such letter; and

WHEREAS, Developer previously executed and recorded in the Butler County, Kansas real estate records at Book 785, Page 297, *et seq.*, that certain "Quail Crossing Addition Covenant Concerning Pipeline" and Developer desires to modify and restate the same as provided herein.

NOW, THEREFORE, Developer hereby adopts and establishes the covenants contained herein and declares that the Lots shall be held, sold and conveyed subject to the following covenants, which are hereby declared to be applicable to all of the Lots and the owners thereof, their successors and assigns:

1. In the event the City is required to pay any costs, or incurs any expenses, from time to time with respect to the City's obligation to Kaneb as referred above, the City shall give written notice to the record title owners of all Lots, advising them concerning the costs paid by the City. The fee title owner(s) of each Lot shall reimburse the City in an amount equal to the Proportionate Share of such costs and expenses, apportioned to the owner's Lot. As used in this covenant, the term "Proportionate Share" shall mean the fraction of the total number of Lots in the Addition which the owner's Lot represents, based on race, color, religion, sex, handicap, familial status or national origin, unless and only to the extent that the restriction (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. § 3607, or (c) relates to a handicap, but does not discriminate against handicapped people.

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BOOK 893 PAGE 171



-equal to the Proportionate Share of such expenditures applicable to such owners Lot. As used in the preceding sentence, "Proportionate Share" shall mean the total amount of such expenditures by the City, divided by the aggregate number of Lots in the First and 2<sup>nd</sup> Additions. Initially there are to be 172 Lots in the First and 2<sup>nd</sup> Additions, but it is possible there could be some change in the number of Lots. The owner of each Lot shall promptly remit payment to the City of its Proportionate Share of such City expenditures within 90 days following receipt of such notice.

2. In the event the City does not timely receive full payment from the owners of any Lot or Lots as required in paragraph 1 above, the appropriate representative of the City shall notify the County Clerk for Butler County, Kansas, of the delinquency of such payment along with the name of the delinquent Lot owner(s) and the legal description of the applicable Lot. The County Clerk is authorized and directed to spread such amount as a special tax with respect to the Lots for which full payment has not been timely made, to be added to the tax rolls in the following year. As a special tax, Butler County shall have all rights and remedies available under applicable law to assess and collect the same and thereafter shall remit payment to the City.

a. Each grantee of a Lot and any purchaser under any contract of purchase covering any part of a Lot, accepts the covenants contained herein.

b. The covenants contained herein shall run with the land and inure to the benefit of, and be enforceable by, the City for so long as the City's obligation to Kaneb as referenced herein remains in effect.

c. This instrument may only be amended in writing, signed by the City and the owners of the Lots.

d. No breach of the covenants contained herein, no enforcement of any rights by the City or Butler County, Kansas, shall defeat or render invalid any mortgage made and conveyed and for value.

IN WITNESS WHEREOF, Developer has executed this instrument as of the day and year first above written.

QUAIL CROSSING, LLC

By

Jay Russell

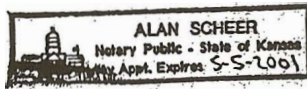
Title Member

Member- Quail Crossing, LLC

STATE OF KANSAS           )  
                                  ) ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this 19 day of January, 1999, before me a Notary Public in and for the County and State aforesaid, personally appeared Jay Russell, a member of Quail Crossing, LLC, a Kansas limited liability company, personally known to me to be such member and the same person who executed, as such member, the above and foregoing instrument in writing on behalf of said corporation 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 official seal the day and year last above written.



Alan Scheer  
NOTARY PUBLIC

My Appointment Expires:

May 5, 2001

**SECOND AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR QUAIL CROSSING ADDITION**

THIS SECOND AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUAIL CROSSING ADDITION ("Amendment"), is made this 22 day of July, 1999, by Quail Crossing LLC, a Kansas limited liability company ("Developer").

**WITNESSETH:**

WHEREAS, Developer filed with the register of Deeds Office, Butler County, Kansas, that certain Declaration of Covenants, Conditions and Restrictions for Quail Crossing Addition ("CCRs") on the 11<sup>th</sup> day of September, 1996, recorded at Book 785, Page 299; and

WHEREAS, Developer has the power and authority to amend the CCRs pursuant to Section 11.10 thereof; and

WHEREAS, Developer desires to further amend the CCRs as provided herein.

NOW THEREFORE, Developer hereby amends the CCRs as provided herein as described in paragraphs 1-5 as listed below.

1. Within Article V - USE, OCCUPANCY AND CONDUCT RESTRICTIONS, paragraph 5.2, Construction Requirements, is hereby deleted in its entirety and replaced by the paragraph listed below. Any Structure on any Lot which is not complete or under construction on or before the day and year first above written shall comply with these requirements.

5.2 Construction Requirements. Unless approval is otherwise granted by the Design Committee, the following construction requirements shall be complied with:

A. Except as provided in paragraph B below, as to all Lots within the Quail Crossing Addition and Quail Crossing Second Addition, the applicable construction requirements shall be as follows:

Exterior walls of all buildings, Structures and appurtenances thereto constructed on any lot shall be of brick, stone stucco, wood siding, wood paneling, glass, glass blocks, vinyl or steel siding, or any combination thereof or as approved by the Design Committee. A one story residence shall contain not less than 1,000 square feet of finished floor area, exclusive of basements, porches, and garages. A one and one half, two story residence and tri-level, quad-level or higher level residence, exclusive of basements, porches, and garages, shall contain not less than 1,300 square feet of finished floor area. A bi-level residence, exclusive of basements, porches, and garages, shall contain not less than 1,400 square feet of finished floor area. Each residence shall, unless otherwise approved by the Design Committee, include a poured concrete basement which shall contain a floor area of comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of basements, porches, and garages. All roofs on all building improvements on any ~~such~~ Lot shall be Approved Composition. As used in this Declaration, "Approved Composition" shall mean composition roofing materials approved by the design committee from time to time.

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B. As to all Lake Lots in both Additions of the property (Lake Lots shall mean Lots with a common boundary with Reserve D of the Common Area), the applicable construction requirements shall be as follows:

Exterior walls of all buildings, Structures and appurtenances thereto constructed on any lot shall be of brick, stone stucco, wood siding, wood paneling, glass, glass blocks, vinyl or steel siding, or any combination thereof or as approved by the Design Committee. A one story residence shall contain not less than 1,300 square feet of finished floor area, exclusive of basements, porches, and garages. A one and one half, two story residence and tri-level, quad-level or higher level residence, exclusive of basements, porches, and garages, shall contain not less than 1,450 square feet of finished floor area. A bi-level residence, exclusive of basements, porches, and garages, shall contain not less than 1,500 square feet of finished floor area. Each residence shall, unless otherwise approved by the Design Committee, include a poured concrete basement which shall contain a floor area of comprising at least eighty percent (80%) of the ground level floor area contained in such residence, exclusive of basements, porches, and garages. All roofs on all building improvements on any such Lot shall be Approved Composition as defined previously.

C. Flat Roofs and Windows. No flat roof shall be permitted, except with permission of the Design Committee. Window frames shall be wood, metal or vinyl or other composition materials as approved from time to time by the Design Committee.

2. Within Article V – USE, OCCUPANCY AND CONDUCT RESTRICTIONS, paragraph 5.13, Sight Lines, is hereby deleted in its entirety and replaced by the paragraph listed below.

5.13 Sight Lines. No fence, wall, hedge, or scrub planting which obstructs sight lines at elevations between two feet (2') and six feet (6') above roadways 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 feet (25') 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. The same sight line restrictions shall apply to any Lot within ten feet (10') 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 foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

3. Within Article V – USE, OCCUPANCY AND CONDUCT RESTRICTIONS, paragraph 5.15, Trailers, is hereby deleted in its entirety and replaced by the paragraph listed below.

5.15 Vehicles, Parking and Garages. No boat, boat trailer, house trailer, motor home, camper, camping trailer, horse or other livestock trailer, recreational vehicle, automobile, truck, motorcycle, bus, specially equipped commercial vehicle, or similar item shall be stored or permanently, continually, or regularly parked in and on any street, the Common Area, or in the open on any Lot or driveway. All vehicles shall be parked in the garage and not continually parked on a regular basis in the street or driveway. Garage doors that face on a street shall be kept closed at all times except for purposes of entry, exit, or maintenance

4. Within Article V – USE, OCCUPANCY AND CONDUCT RESTRICTIONS,  
the following paragraphs are hereby appended.

5.29 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 or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given not less than fifteen (15) days' prior written notice of such action.

5.30 Noxious, Dangerous, and Offensive Activities Prohibited. No noxious, dangerous, or offensive activity or thing shall be carried on or permitted, nor shall anything be done which may be or may become an annoyance or nuisance to the Association. This is to specifically include, but is not limited to; the burning of trash, excess building materials, or leaves/brush.

5.31 Laundry and Machinery. No clothing or other household fabric shall be hung in the open on any Lot, except with specific written approval of the Board. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence.

5. Within Article VIII – DESIGN COMMITTEE ARCHITECTURAL CONTROL,  
the following paragraphs are hereby appended.

8.7 Retention of Approved Plans and Specifications. Upon approval by the Design Committee of any plans and specifications submitted hereunder a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Association, and a copy of such plans and specifications bearing such approval in writing, shall be returned to the applicant submitting the same.

8.8 Right of Inspection. The Association, through any of its 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 Design 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.

8.9 Initial Policy Guidelines. The following initial policy guidelines have been established and the same may be changed from time to time pursuant to the provisions of paragraph 8.2 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the Design Committee to determine current policy guidelines.

a. There shall be no rock yards and all yard areas, exclusive of improvements, shall be at least seventy percent (70%) grass.

b. There shall be no underground or geodesic dome homes.

c. Materials and plans for any retaining walls must be previously approved in writing by the Design Committee.

d. All basketball goals shall be either white or glass. No "home-made" basketball backboards or supports shall be permitted. All basketball goals and supports shall be first approved by the Design Committee.

e. All recreation and play equipment shall be located in the rear of any Lot except for basketball goals. All playground equipment installed on any "Lake Lot" must be previously approved by the Design Committee.

f. There shall be no above ground swimming pools.

g. All dog runs must be in the rear yard on the back of the home and must be screened from the view of neighboring homes with fencing or other appropriate materials approved by the Design Committee. No dogs shall be continually or regularly chained or staked in any front or side yard.

h. In no event shall any chain link or woven wire fence of any type be permitted.

i. All vegetable gardens shall be in the back yards only and shall be screened from sight from adjoining Lots.

j. No zoysia or bermuda grass lawn shall be permitted.

k. All exterior wood surfaces on homes must be painted or stained and sealed.

l. All construction must be completed within one (1) year from commencement thereof.

m. Pad elevations will be set by Declarant's engineer at the cost of the owner. Any deviation therefrom and any resulting damage shall be the responsibility of Owner.

n. Lawns shall be mowed on a regular basis and at a height not to exceed five inches (5").

o. No Christmas lights or decorations shall be lighted before Thanksgiving and shall be taken down no later than March 15<sup>th</sup> of the following year.

p. All flagpoles and the type of flag that may be flown must be first approved by the Design Committee.

q. No window shall contain any reflective material such as aluminum foil.

r. All firewood stacks in excess of two (2) ricks shall be screened from view from neighboring Lots.

s. Any temporary covering of a swimming pool, patio, or otherwise shall be deemed a structure that is subject hereto.



t. All forms of sculpture and "yard art" must be first approved by the Design Committee.

u. All forms of grills, smokers, or other such devices must be located in the rear of any Lot or stored out of sight when not in use.

IN WITNESS WHEREOF, Developer has executed this amendment the day and year first above written.

QUAIL CROSSING, LLC,  
A Kansas Limited Liability Company

By

Title

Jay W. Russell

Pres.

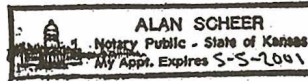
Its

STATE OF KANSAS }  
SEDMICK COUNTY } SS  
Dec 10 4 PM '00  
NOT FILED  
RECEIVED  
REGISTER OF DEEDS

STATE OF KANSAS )  
COUNTY OF SEDGWICK ) ss:

BE IT REMEMBERED, that on this 22 day of July, 1999, before me, a Notary Public in and for the County and State aforesaid, personally appeared Jay W. Russell, a Member of Quail Crossing, LLC, a Kansas limited liability company, who is personally know to me to be such officer and the same person who executed, as such officer, the above and foregoing instrument in writing on behalf of said corporation, 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 seal the day and year last above written.



Alan Scheer  
NOTARY PUBLIC

My appointment expires:

5, 2001

RTN: O'Rourke Title Co.  
(7) 229 E. William, Suite:100  
Wichita, KS 67202



St. of Kansas - Butler Co. } ss  
Recorded December 21, 2000  
At 10:30 A.M. # 12391  
Book 967 Page 91  
Fees \$16.00 (6)  
Marcia McCoy  
Marcia McCoy-Register of Deeds

THIRD AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
QUAIL CROSSING ADDITION

THIS THIRD AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS FOR QUAIL CROSSING ADDITION (Phase One and Phase Two) ("Amendment"), is made this 28 Day of Feb, 2005, by Quail Crossing LLC a Kansas limited liability company ("Developer").

WITNESSETH:

WHEREAS, Developer filed with the register of Deeds Office, Butler County, Kansas, that certain Declaration of Covenants, Conditions and Restrictions for Quail Crossing Addition ("CCR") on the 11<sup>th</sup> day of September, 1996, recorded at Book 785, Page 299, and

WHEREAS, Developer has the power and authority to amend the CCRs pursuant to Section 11.10 thereof, and

WHEREAS, Developer desires to further amend the CCRs as provided herein.

NOW THEREFORE, Developer hereby amends the CCRs as provided herein as described in paragraphs

1. Within Article IV – COVENANTS CONCERNING ASSESSMENTS AND LIENS paragraph 4.5 - Collections and Expenditures is hereby modified to include the following statement. Overdue QCHA dues will be sent to collection as of April 1. \$10.00 per month late fees will be assessed.

2. Within Article V – USE OCCUPANCY AND CONDUCT RESTRICTIONS paragraph 5.2 A – Construction Requirements is hereby modified to include the following statements: (1) Sheds will be no larger than 12 x 14 (168) square feet) look like front of residence, materials used (siding, roofing, paint, etc) must be the same as residence. Sheds on lake lots will not be allowed. (2) All roofs must be "weathered wood" composite heritage type shingles.

3. Within Article V – USE OCCUPANCY AND CONDUCT RESTRICTIONS paragraph 5.24 B – Fences is hereby modified to include the following statement: All fences will be made of wood or wrought iron or vinyl or a combination of these and cannot exceed 6ft. in height. All fence pickets will be on the outside of the fence except with QCHA approval. On lake lots only black wrought iron fences will be used and must be 5ft. All fences must have QCHA approval.

4. Within Article VIII – DESIGN COMMITTEE, ARCHITECTURAL CONTROL paragraph 8.9 - Initial Policy Guidelines reads: The following initial policy guidelines have been established and the same may be changed from time to time pursuant to the provisions of paragraph 8.2 hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry should be made of the Design Committee to determine current policy guidelines. Modification has been made to the following:

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SCAN  
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SHOW



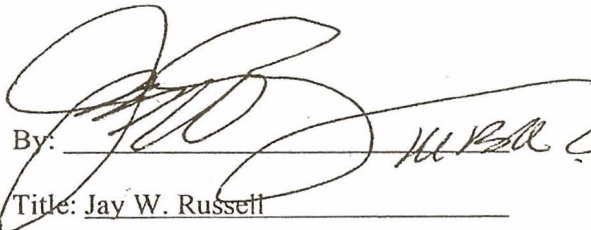
- 8.9 e. No playground, exercise or recreational equipment will be allowed on lake lots except wooden swing set play centers. All wooden swing sets must be approved. All recreation and play equipment shall be located in the rear of any lot except for basketball goals. All playground equipment installed on any "Lake Lot" must be previously approved by the Design Committee.

IN WITNESS WHEREOF, Developer has executed this amendment the day and year first above written.

RTN: Alan Brown  
1509 W. Browning Court  
Andover, KS 67002

QUAIL CROSSING, LLC  
A Kansas Limited Liability Company

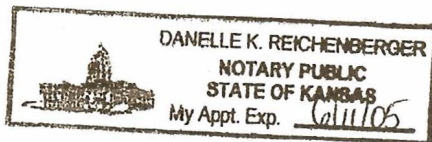
BUTLER COUNTY, KS  
- MARCIA MCCOY -  
REGISTER OF DEEDS  
Book: 1315 Page: 113  
Receipt #: 21705 Total Fees: \$12.00  
Pages Recorded: 2  
Date Recorded: 3/3/2005 3:50:25 PM  
Teresa Dawson, Deputy  
STATE OF KANSAS)

By:   
Title: Jay W. Russell

COUNTY OF SEDGWICK)

BE IT REMEMBERD, that on this 28 day of Feb, 2005, before me, a Notary Public in and for the County and State aforesaid, personally appeared Jay W. Russell, a Member of Quail Crossing, LLC, a Kansas limited liability company, who is personally know to me to be such officer and the same person who executed, as such officer, the above and foregoing instrument in writing on behalf of said corporation, and such person duly acknowledge the execution of the same to be the act and deed of said corporation.

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



  
NOTARY PUBLIC Danelle K. Reichenberger

My appointment expires: 06/11/05

UNDERTAKING OF OPERATIONS

St. of Kansas - Butler Co. } 53  
 Recorded March 30, 1999  
 At 2:35 P.M. # 3889  
 Book 893 Page 173  
 Fee \$20.00 (8)  
*Marcia McCoy*  
 Marcia McCoy-Register of Deeds

This Undertaking of Operations (hereinafter "Undertaking") is executed effective February 9, 1999 by Quail Crossing, L.L.C., a Kansas limited liability company (hereinafter the "Developer"); and Quail Crossing Homeowners' Association, a Kansas not-for-profit corporation ("Association").

## WITNESSETH:

WHEREAS, Developer is the current "Developer" under that certain Declaration of Covenants, Conditions and Restrictions for Quail Crossing Addition dated September 11, 1996 and recorded on September 11, 1996, at Book 785, Page 299 in the Butler County real estate records, as amended (the "Declaration") concerning the First Phase and Phase 2, Quail Crossing Addition to Andover, Butler County, Kansas; and

WHEREAS, capitalized terms not defined herein shall have the definitions given to such terms in the Declaration; and

WHEREAS, pursuant to Section 3.4 of the Declaration, the Developer shall convey the Common Area to the Association and thereupon the Association shall undertake the complete operation of the Common Area so conveyed to the Association.

NOW, THEREFORE, in consideration of the premises and pursuant to provisions of the Declaration, the Association hereby undertakes operations of the Common Area to be conveyed pursuant hereto, including the rights and obligations which are set out in or arise from Article III (Property Rights In the Common Area) and Article IV (Covenants Concerning Assessments and Liens) of the Declaration.

1. Promptly following the date hereof, Developer shall convey all of the Common Area to the Association. Immediately following such conveyance, the Association shall convey the portions of the Common Area described in the deed attached as Attachment 1 hereto, to the grantee specified in such deed. Additionally, upon the request of Developer, the Association shall convey to Caywood, L.L.C. such portion of Reserve H in the Common Area as is requested by Developer.

2. The Association has inspected the portion of the Common Area to be deeded to the Association pursuant to this Undertaking and hereby accepts such the Common Area in its current condition, "AS IS", subject to the completion of the improvements to the Common Area which are described on Attachment 2 hereto promptly following the date hereof.

3. The Association hereby undertakes all responsibility for the repairs and maintenance of, and for enforcement of the terms and conditions of the Declaration, with respect to the portion of the Common Area to be conveyed by Developer pursuant to this Undertaking and shall hereafter maintain the unimproved portions of the street rights-of-way adjacent to the Lots and Common Area.

4. As of this date, Developer owns several Lots within Quail Crossing Addition to Andover, Butler County, Kansas (the "Development"). It is in the Developer's interest, as well as the Association's interest, that sufficient revenues be generated from assessments under Article III of the Declaration, so that the portion of the Common Area owned by the Association may be maintained in a reasonable fashion for the use and benefit of the Members of the Association. Developer hereby agrees to supplement the Association revenues by paying, at the same time as Owners are required to pay assessments under the Declaration, an amount equal to the difference between (a) the revenue required by the Approved Budget then in effect for the Common Area by the Association, and (b) the aggregate amount of revenues to be received by the Association due to the timely payment of assessments by all non-exempt Owners during the applicable time period, plus the amount of revenue reasonably expected to be received during such time period as transfer assessments under Section 4.02 of the Declaration. The Association shall propose the Approved Budget for the calendar year 1999 to Developer as soon as reasonably possible, and Developer shall

respond promptly thereto and the Developer and the Association shall resolve and agree upon the same as reasonably possible thereafter. The Association shall propose to Developer on or before December 1 of each subsequent calendar year a budget for the next ensuing calendar year. The intent of Developer and the Association is that the Approved Budget shall be adequate, in all respects, for the reasonable maintenance of the Common Area. Developer shall respond as soon as reasonably possible to each proposed budget, and thereafter, the Association and Developer shall endeavor in good faith to mutually agree upon the budget; provided, if such parties are unable to so agree by January 30 following submission of the proposed budget, the Approved Budget in effect for the immediately preceding calendar year shall be the Approved Budget.

5. Developer and the Association hereby agree that Developer's obligation to supplement Association revenues as provided in paragraph 4 above shall discontinue as of the calendar year during which the amount of revenues required by the Approved Budget will be generated due to the timely payment of assessments by non-exempt Owners during such calendar year together with the reasonably anticipated transfer assessments referred to in paragraph 4 above.

6. Notwithstanding anything to the contrary appearing herein, Developer, and its successors and assigns, shall continue to have its rights under the Declaration which are not specifically undertaken by the Association hereunder, including, but not limited to, the sole right and authority to determine the membership of the Design Committee specified in Article VIII of the Declaration.

7. For 1998, Developer has advanced on behalf of the Association all funds necessary for operation of the Common Area, which expenditures were in the aggregate of \$3,819.70. The Association agrees that it will promptly remit to Developer as reimbursement for such expenditures all revenues of the Association attributable to 1998 as a result of the payment of assessments or transfer fees by Lot Owners. The Association shall retain any such revenues in excess of the aggregate expenditures by Developer as referenced above.

8. (a) This Undertaking shall be interpreted and construed only by the contents thereof, and there shall be no presumption or standard of construction in favor of or against either party.

(b) This Undertaking shall be construed and enforced in accordance with the laws of the State of Kansas. The Developer or the Association shall have the right to seek enforcement of or to prevent the breach of the terms and conditions of this Undertaking. Any action relating to any rights and obligations arising under, or in connection with, this Undertaking, including, but not limited to, an action to seek enforcement of or to prevent the breach of any of the covenants and restrictions contained herein, shall be resolved solely and exclusively by arbitration in accordance with the Kansas Uniform Arbitration Act (the "Act"), as modified from time to time, in accordance with the procedure set out below. However, the provisions of this paragraph (b) shall not prevent a party from obtaining a temporary injunction from a court of general jurisdiction pending designation of the arbitrators. After the arbitrators have been selected and accepted such appointment, any temporary injunction order by the court of general jurisdiction shall be dissolved, and the arbitrators shall have exclusive power to resolve the subject matter of such injunction. Either of the parties hereto may request arbitration of any matter in dispute. The party requesting arbitration shall do so by giving written notice to the other, specifying the name and address of the person designated to act as arbitrator on the first party's behalf. Within ten days after service of such notice, the second party shall give notice to the first party, specifying the name and address of the person designated to act as arbitrator on the second party's behalf. If the second party fails to notify the first party of the appointment of such party's arbitrator within the time specified, then the first arbitrator shall appoint the second arbitrator. The two arbitrators chosen shall meet within ten days after the second arbitrator is appointed, and the two arbitrators shall together appoint a third arbitrator. If the two arbitrators are unable to agree upon the appointment within twenty days after appointment of the second arbitrator, then either of the parties to such dispute may apply, upon notice to the other party, to the Kansas District Court located in the County in which the Common Area is located for the appointment of the third arbitrator. In rendering their award, the arbitrators shall have no power to modify any of the covenants, conditions or restrictions



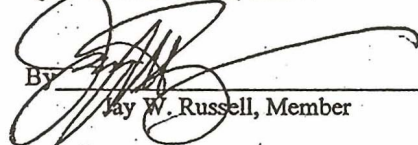
contained herein. The arbitrators so selected must be at least 30 years old; may not reside in the Property covered by the Declaration; and shall have a minimum of five years experience in the residential real estate business, as either a sales agent, residential developer or a home developer. The arbitrators may grant any remedy or relief the arbitrators deem just and equitable and within the scope of the agreement of the parties. The arbitrators shall specifically have the power to order equitable relief, including, but not limited to, injunctions or specific performance. The award resulting from any arbitration hereunder shall be final and binding on the parties and judgment may be entered on the award and shall be enforced in accordance with the laws of the State of Kansas. Each party shall pay the fees and expenses of the original arbitrator appointed by that party, and the fees and expenses of the other arbitrator and all other expenses of the arbitration shall be borne equally by the parties. Each party shall bear the expense of his own counsel, experts, and preparation and presentation of proof.

(c) This Undertaking is the entire agreement among the parties, and supersedes all prior agreements and communications, whether written or oral, among the parties with respect to the subject matter hereof. Any amendment or modification to this Undertaking must be in writing and duly signed by the parties hereto.

IN WITNESS WHEREOF, this Undertaking is executed as of the day and year first above written.

"DECLARANT"

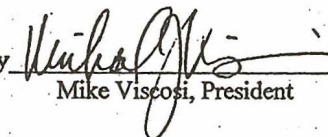
QUAIL CROSSING, L.L.C.

By   
Jay W. Russell, Member

The foregoing is hereby acknowledged and accepted as of the date of this instrument.

"ASSOCIATION"

QUAIL CROSSING HOMEOWNERS'  
ASSOCIATION

By   
Mike Viscosi, President

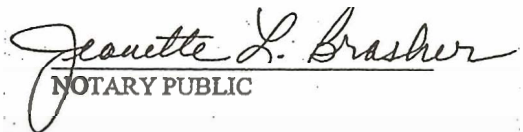
STATE OF KANSAS )  
 ) ss:  
COUNTY OF SEDGWICK )

BE IT REMEMBERED, that on this 9<sup>th</sup> day of March, 1999, before me a Notary Public in and for the County and State aforesaid, personally appeared Jay W. Russell, a member of Quail Crossing, L.L.C., personally known to me to be such member and the same person who executed, as such member, the above and foregoing instrument in writing on behalf of said limited liability company and such person duly acknowledged the execution of the same to be the act and deed of said limited liability company.

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

My appointment expires:

JEANETTE L. BRASHER  
NOTARY PUBLIC  
STATE OF KANSAS  
My Appt. Exp. \_\_\_\_\_

  
NOTARY PUBLIC

STATE OF KANSAS )

) ss:

COUNTY OF SEDGWICK )

BE IT REMEMBERED, that on this 9th day of February, 1999, before me, a Notary Public in and for the County and State aforesaid, personally appeared Mike Viscosi, the President of Quail Creek Homeowners' Association, a Kansas nonprofit corporation, who is personally known to me to be such officer and the same person who executed, as such officer, the above and foregoing instrument in writing on behalf of said corporation, 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 seal the day and year last above written.

My appointment expires: 6-12-99

Pamela Barnhart  
NOTARY PUBLIC



1188053

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made this \_\_\_\_ day of January, 1999, between **QUAIL CROSSING HOMEOWNERS' ASSOCIATION**, a Kansas not-for-profit corporation, "Grantor" and **THE NORTH MEADOW HOME OWNERS' ASSOCIATION, INC.**, a Kansas corporation, "Grantee."

WITNESSETH, that Grantor, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents remise, release and deliver unto Grantee, its heirs and assigns, all of the following described real estate situated in the County of Sedgwick and State of Kansas, to wit:

Reserves E, F, G, I and part of Reserve H, First Phase of Quail Crossing Addition to Andover, Butler County, Kansas, containing 0.62 acres more or less and being described as follows:

Reserve H, Quail Crossing Addition to Andover, Butler County, Kansas; except the portion described as commencing at the Northeast corner of the South Half of the Northwest quarter of Section 7, Township 27 South, Range 3 East of the 6<sup>th</sup> P.M. Butler County, Kansas; thence N89°40'55"W for a distance of 88.07 feet to the point of beginning; thence northerly on a circular curve lying North of a 28.28 foot chord bearing N29°43'18"E, having a radius of 93.00 feet, and a central angle of 17°29'30" for an arc distance of 28.39 feet; thence N38°28'03"E for a distance of 64.52 feet to a point on the West line of Lakeside street right of way; thence N 51°31'57"W along said street right of way for a distance of 32.00 feet; thence Northerly on said street right of way along a circular curve to the right having a radius of 390.00 feet and a central angle of 04°42'23" for an arc distance of 32.04 feet; thence S38°28'03"W for a distance of 65.84 feet; thence along a circular curve to the left having a radius of 157.00 feet and a central angle of 21°59'44" for an arc distance of 60.27 feet; thence S16°28'19"W for a distance of 11.32 feet to a point on the south line of said Quail Crossing Addition; thence S89°40'55"E for a distance of 66.93 feet to the point of beginning; and except the portion described as beginning at the Southwest corner of Lot 1, Block 4 of said Quail Crossing Addition; thence S89°40'55"E for a distance of 128.19 feet to the Southeast corner of said Lot 1, Block 4; thence S03°19'50"E for a distance of 70.14 feet to the eastern most point on the North line of Lot 2, Block 4 of said Quail Crossing Addition; thence N89°40'55"W for a distance of 134.00



feet to the Northwest corner of said Lot 2, Block 4; thence Northerly along the East right-of-way of Remington Circle, on a circular curve, lying East of a 8.36 foot chord bearing  $N01^{\circ}10'33''E$ , having a radius of 209.00 feet, and a central angle of  $2^{\circ}17'33''$  for an arc distance of 8.36 feet; thence  $N00^{\circ}01'46''E$  along the East right of way of Remington Circle for a distance of 32.90 feet; thence along a circular curve to the right having a radius of 270.00 feet and a central angle of  $6^{\circ}06'28''$  for an arc distance of 28.78 feet to the point of beginning.

**TO HAVE AND TO HOLD THE SAME**, together with all and singular, the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, forever, subject to rights of way and easements of record or in place; liens for nondelinquent taxes and assessments; covenants, declarations, conditions and restrictions of record; and other matters of record.

Grantor, for its successors and assigns, does hereby warrant title by, through and under Grantor, but not otherwise.

The real estate conveyed hereby is conveyed by Grantor and accepted by Grantee, in an AS IS condition, with all faults and defects.

THIS TRANSFER OF TITLE DOES NOT REQUIRE A SALES VALIDATION QUESTIONNAIRE AS IT WAS BY WAY OF GIFT, DONATION OR CONTRIBUTION.

IN WITNESS WHEREOF, the Grantor has executed this instrument this \_\_\_\_ day of January, 1999.

**QUAIL CROSSING HOMEOWNERS' ASSOCIATION**, a Kansas not-for-profit corporation

By: \_\_\_\_\_  
Mike Viscosi, President

STATE OF KANSAS            )  
                                  )  
COUNTY OF SEDGWICK    ) ss:

BE IT REMEMBERED, that on this \_\_\_\_ day of January 1999, came before me, a Notary Public in and for the County and State aforesaid, personally appeared Mike Viscosi, President of Quail Crossing Homeowners' Association, a Kansas not-for-profit corporation, personally known to me to be the same person who executed, as such officer, the above and foregoing instrument in writing, on behalf of said corporation, 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 official seal the day and year last above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Appointment Expires:  
\_\_\_\_\_

# ASSIGNMENT OF DECLARANT'S RIGHTS

THIS Assignment of Declarant's Rights is made and entered this 10<sup>th</sup> day of September, 1996, by and between 3 A.H., Inc., a Kansas corporation ("Assignor") and Quail Crossing, L.L.C., a Kansas limited liability company ("Quail Crossing").

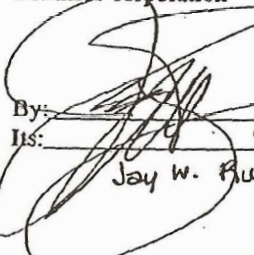
WHEREAS, Assignor is the Developer specified in that certain Declaration of Covenants, Conditions and Restrictions for Quail Crossing Addition, dated September 10<sup>th</sup>, 1996 concerning Quail Crossing Addition to Andover, Butler County, Kansas (the "Declaration"); and

WHEREAS, Assignor desires to assign its rights and obligations under the Declaration,

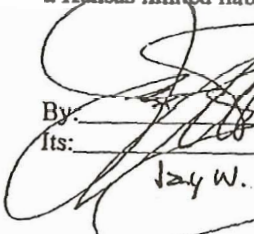
NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby assigns and transfers unto Quail Crossing all of its rights and obligations as Developer under the Declaration. Quail Crossing hereby agrees to assume and perform the obligations of Developer under the Declaration.

EXECUTED the day and year first above written.

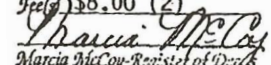
3 A.H., INC.,  
a Kansas corporation

By:   
Its: Jay W. Russell

QUAIL CROSSING, L.L.C.  
a Kansas limited liability company

By:   
Its: Jay W. Russell

RTN: City of Andover  
(4) P.O. Box 295  
Andover, KS 67002

St. of Kansas - Butler Co. } SS  
Recorded September 11, 1996  
At 3:50 P.M. # 2398  
Book 785 Page 298  
Fee \$8.00 (2)  
  
Marcia McCoy-Register of Deeds

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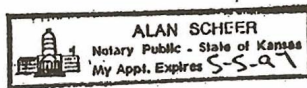
Any covenant, condition or restriction in this document indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin is omitted as provided in 42 U.S.C. §3604, unless and only to the extent that the restriction (a) is not in violation of state or federal law, (b) is exempt under 42 U.S.C. §3607, or (c) relates to a handicap, but does not discriminate against handicapped people.



STATE OF KANSAS            )  
  ) ss:  
COUNTY OF SEDGWICK    )

BE IT REMEMBERED, that on this 30 day of August, 1996, before me a Notary Public in and for the County and State aforesaid, personally appeared Jay W. Russell a member of Quail Crossing, L.L.C., a Kansas limited liability company, personally known to me to be such member and the same person who executed, as such member, the above and foregoing instrument in writing on behalf of said corporation 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 official seal the day and year last above written.



Alan Scheer  
NOTARY PUBLIC

My Appointment Expires:

May 5, 1997

RTN: City of Andover  
(4) P.O. Box 295  
Andover, KS 67002

St. of Kansas - Butler Co. } SS  
Recorded September 11, 1996  
At 3:50 P.M. #9397  
Book 785 Page 297  
Fee \$10.00 (3)  
Marcus McCoy  
Marcus McCoy - Register of Deeds