

SEDGWICK COUNTY

DEC 2 4 41 PM '98

DECLARATION OF

COVENANTS, CONDITIONS, AND RESTRICTIONS

BILL MEEK  
REGISTER OF DEEDS

MICROFILMED  
OF RECORD

OF

EVERGREEN

THIS DECLARATION, made this 30th day of November, 1998 by Socora Village Company, a Kansas Corporation ("Declarant").

WITNESSETH:

*James L. Bluyd*  
DEPUTY



WHEREAS, Declarant is the owner of certain real property in Sedgwick County, Kansas, which is more particularly described as Lots 1 through 21, Block 1; Lots 1 through 19, Block 2; Lots 1 through 17, Block 3; Lots 1 through 45, Block 4; Lots 1 through 40, Block 5; Lots 1 through 11, Block 6; Lots 1 through 25, Block 7; Lots 1 through 35, Block 8; and Lots 1 through 20, Block 9 of Evergreen, an Addition to Wichita, Sedgwick County, Kansas which lots are hereafter sometimes referred to as "the Evergreen Subdivision" and/or "Evergreen Subdivision Lots" and/or "Lots"; and

WHEREAS, it is necessary to establish binding conditions and restrictions applicable to the Evergreen Subdivision and any additional lands annexed thereto from time to time as hereafter provided in Section 9.1 to insure the proper development and maintenance thereof and the rights of property owners and residents therein; and

WHEREAS, it is the purpose and intention of this Declaration that all of the Evergreen Subdivision shall be held and/or conveyed subject to the covenants, conditions and restrictions contained in this Declaration; and

WHEREAS, Declarant may, but shall not be required to, include additional adjacent real property under this Declaration;

NOW THEREFORE, Declarant hereby declares that all of the Evergreen Subdivision, as above described, (including replatted lots), shall be held, sold and conveyed subject to the

Slawson Companies, Inc.  
ATTN: Sally J. Fisher  
104 S. Broadway, #200  
Wichita, KS 67202-4165

following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the land 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. Declarant expressly excludes from the scope of this Declaration Block 7, Lot 26, and Block 9, Lot 21 of Evergreen, an Addition to Wichita, Sedgwick County, Kansas for all purposes. Such lots are not included within the "Evergreen Subdivision".

## ARTICLE 1

### Association Membership and Voting Rights

**Section 1.1. Formation of Association.** There shall be established the Evergreen Homeowners' Association (hereafter the "Association"). The Association shall be organized by Declarant as a nonprofit corporation for a perpetual term under the laws of the State of Kansas.

**Section 1.2. Membership.** Membership in the Association shall be mandatory for each owner of a Lot. Each of such landowners is hereinafter referred to as an "Owner".

**Section 1.3. Definition of Member.** "Member" shall be defined as every person or entity who or which is a record owner of a fee or undivided fee interest in any Evergreen Subdivision Lot, but not including any Owners who have sold their interest under executory contract. During such time as such contract is in force, the contract vendee shall be considered to be the member of the Association, if the vendee and owner have jointly given notice to the Association that such a contract is pending. Notwithstanding the foregoing, where Declarant as Builder has executed a contract with a purchaser for the construction of a Residence upon an Evergreen Subdivision lot for that purchaser, Declarant will be deemed the owner of such lot for all purposes until title to the Evergreen lot has passed from Declarant to purchaser by a recorded deed.

**Section 1.4. Definition of Lot.** The word "Lot" as used herein shall mean an Evergreen Subdivision lot as set forth in the recorded plat, or portion thereof, and which contains, or is designed to contain, one dwelling unit; provided that where property has been attached or detached from any lot, the enlarged lots and/or the diminished lots shall be deemed to be a "Lot"; provided, further, two or more lots which are combined into a single homesite shall be deemed to be one "Lot" for the purpose of computing voting rights hereunder.

**Section 1.5 Voting Rights.** There shall be two (2) votes in the Association for each Lot. When more than one person holds an interest in any Lot, all such persons shall be Members. The votes for such Lot shall be exercised as the Owners of such Lot may determine

among themselves. If such Members cannot jointly agree as to how their votes should be cast, no votes shall be allowed with respect to such Lot. Notwithstanding the foregoing, Declarant shall be entitled to six (6) votes for each Lot of which it is the Owner.

**Section 1.6. Initial Operation.** The initial operation of the Association shall be by Declarant until such time as Declarant turns over the operations thereof to the Owners. Declarant shall be required to turn the operation of the Association over to the Owners no later than such time as Declarant owns less than twenty-five percent (25%) of the Evergreen lots.

**Section 1.7. Board of Directors.** All actions of the Association shall be taken on its behalf by its Board of Directors (the "Board"), except when a vote of the Members is specifically required by this Declaration, or the Association's Articles of Incorporation or Bylaws.

## ARTICLE 2

### Authority of Association

**Section 2.1 Designation of Committees.** The Association shall have the sole and exclusive authority to appoint committees for the purposes of organizing, monitoring, approving and conducting the business of the development.

The Association hereby designates an Architectural Committee. The Architectural Committee will have the exclusive authority to exercise architectural control as such is defined in Article 6 hereafter over the Evergreen Subdivision Lots.

The original members of the Architectural Committee (hereafter "the Committee") shall be one to three persons to be appointed by Declarant. Upon the death or resignation of any member of the Committee, Declarant shall appoint a successor, unless at such time, Declarant has relinquished its rights hereunder as hereinafter provided. In such event, the Committee shall have full authority to designate a successor. The act of a majority of the Committee shall be binding, and the majority of the Committee may designate a representative to act for it. Declarant shall retain its rights hereunder until the same are relinquished to the Owners. Declarant may relinquish its rights or any portion thereof under this paragraph to the Owners by advising the Owners in writing of its intent to do so and in such event, the Owners shall have the authority of Declarant under this paragraph. Declarant shall fully relinquish its rights hereunder no later than such time as Declarant shall cease to own any Lots in the Addition.

**Section 2.2 Performance of Committee Functions.** From and after such time as the Association is turned over to the Owners pursuant to Section 1.6 above, the Association shall have all of the rights, powers, and responsibilities given to any committee under this Declaration, and at such time any such committee shall cease to exist. In addition, the

Association shall from its inception have the right to levy assessments against the Lots as provided in Article hereof.

**Section 2.3 Association Maintenance.** The Association shall maintain Reserves A and B within the Evergreen subdivision which are deeded to the Association as hereafter defined in Article 3.3, including seeding, watering, and mowing of grass, care of plantings, maintenance of the lake, and the maintenance, repair, rebuilding, improving, and replacing of sprinkler systems, fences, entry markers, and signage, if any, and paying for all costs associated therewith. The Reserves A and B within the Evergreen Subdivision are sometimes hereafter referred to as "Common Areas". The Association shall also contribute to the cost of maintenance of the landscape area as described in Article 12 Section 12.6 hereafter.

### ARTICLE 3

#### Property Rights

**Section 3.1 Easement in Common Areas.** Declarant hereby dedicates and conveys to each Member a right and easement of enjoyment in and to the common areas described herein (the "Common Areas"), and Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens, except for the lien of any then current ad valorem taxes or special assessment. Declarant expressly indemnifies and holds harmless the Association and its Members from any loss, cost, damage or claim of any kind arising by, through or under Declarant, and warrants to the Association that the Association is entitled to the peaceful and quiet enjoyment of the Common Areas for the duration of the term of this Declaration. The Association shall be responsible for the payment of taxes and insurance on the Common Areas and for the proper maintenance of the Common Areas as described in Article 2.2 hereof, and for compliance with these Covenants. The title to the Common Areas vested in the Association shall be subject to the rights and easement of enjoyment in and to such Common Areas by its Members. Said easement shall not be personal but shall be appurtenant to the Lots, whether or not specifically set forth in deeds to the Lots.

**Section 3.2 Regulations.** The Association shall have the authority to make and enforce regulations pertaining to the use and maintenance of the Common Areas, which regulations shall be binding upon the Members of the Association and all residents of the Evergreen Subdivision.

**Section 3.3 Description of Common Areas.** The Common Areas to be conveyed to the Association and the use thereof is as provided in the recorded plat of the Addition, and is generally described as follows:

- Reserve A     The Lake, and related common areas.
- Reserve B     Entry Median

**Section 3.4 Use and Restrictions of Common Areas.** The Common Areas may be used for recreation or other uses exclusively for the benefit of the Members as may be determined by the Association. Recreational facilities, including, but not limited to, grills and fireplaces, playground equipment, and similar items, may be constructed in the Common Areas by the Association at its election. All Members in good standing, their families, and guests accompanying said Members shall have equal access to the Common Areas and all facilities located thereon, subject to rules and regulations established by the Association, including the right to place limitations on the number of guests and the right to limit or exclude Members, their families, and their guests if the Members owning the Lot in which they reside are in default in the payment of assessments or in the performance of any other obligation required by this Declaration. The Association shall have the right to suspend the rights of any Member in connection with such Member's use of the Common Areas for any period during which any assessment remains unpaid and for any period, not to exceed thirty (30) days, for any infraction of its published rules and regulations.

**Section 3.5 Reservation of Rights in the Common Areas.** Notwithstanding any other provision of these Covenants, Declarant reserves the right to grant easements within the Common Areas for the installation, repair, and maintenance of water mains, sewers, drainage courses, walkways, and other public utilities, provided that such utilities shall be installed in such manner as to minimize damage to the natural features of the Common Areas. Declarant shall have the further right during the development of the Addition to alter and reconfigure the Common Areas to accommodate developmental concerns as they may arise from time to time, including, but not limited to, adding or deleting land area to the Common Areas or any parcel thereof. The Association shall have the right to mortgage any part, parts, or all of the Common Areas in connection with the borrowing of money in the furtherance of any of its purposes authorized herein and shall have the right to take such steps as are necessary to comply with such mortgage and to prevent foreclosure and any similar proceedings.

**Section 3.6 Lake.** Reserve A consists of a lake lying immediately to the east of certain platted lots (the "Reserve A Lake"). Bank fishing shall be permitted on the Reserve A Lake, subject to such regulations as may be adopted from time-to-time by the Association. No swimming, wading, skating, or watercraft of any type shall be permitted on the Reserve A Lake. Gas powered remote-controlled toys or watercraft of any type shall also not be permitted on the Reserve A Lake.

**ARTICLE 4****ASSESSMENTS**

**Section 4.1 Assessments.** All of the Lots shall be subject to an annual assessment charge to be paid by the respective Owners thereof to the Association annually in advance on the 1st day of January, in each year. The Board of Directors of the Association (the "Board") may in its discretion permit the annual assessment charge to be paid either annually or semiannually.

**Section 4.2 Determination of Assessments.** Each year the Board shall, as soon as practical, but not later than March 1, determine the total amount to be raised by the annual assessment charge for the then current year. This sum so determined shall be divided by the total number of Lots, and each Lot shall be assessed an equal amount. Should the Board at any time determine, in its sole discretion, that the assessments levied are or may prove to be insufficient to pay the costs of operation and maintenance of the Common Areas and the landscape easement referred to in Section 12.6 hereafter, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments as it shall deem to be necessary.

**Section 4.3 Use of Assessment Fund.** The assessment fund shall be used for such of the following purposes as the Association shall determine necessary and advisable: for payment of real estate and ad valorem taxes on Reserves A and B; for improving and maintaining the Common Areas; for caring for vacant property; for removing grass or weeds; for contracting, purchasing, maintaining, or operating any community service; for the purchase of insurance; for the payment of operating expenses of the Association; for doing any other thing necessary or advisable in the opinion of the Association for the general welfare of the Members; or for any other purpose within the purposes for which the Association is incorporated.

**Section 4.4 Interest on Delinquent Assessments.** All assessment charges which shall remain due and unpaid thirty (30) days after they are due shall thereafter accrue interest at the rate of fifteen percent (15%) per annum.

**Section 4.5 Lien for Delinquent Assessments.** It is expressly understood and agreed that the annual assessment charge shall be a lien and encumbrance on the Lot with respect to which said charge is made, and it is expressly agreed that by the acceptance of title to any of said Lots, the Owner from the time of acquiring title thereto shall be held to have covenanted and agreed to pay to the Association all charges provided for herein which were then due and unpaid at the time such Owner acquired title and all such charges thereafter falling due during such Owner's ownership thereof. A certificate in writing issued by the Association or its agent shall be given on demand to any Owner or prospective purchaser liable, or who may be liable, for said charges, which shall set forth the status of said charges. This certificate shall be binding upon such parties.

**Section 4.6 Right of Association to Enforce Payment of Assessment.** By the acceptance of title, each Owner shall be held to vest in the Association the right and power in its own name to take and prosecute all suits, legal, equitable, or otherwise, which may in the opinion of the Association be necessary or advisable for the collection of such charge or charges.

**Section 4.7 Maximum Annual Assessment.**

a. The maximum annual assessment for each lot for calendar year 1999 shall be \$200, and such annual assessment may be increased by the Board for any subsequent year to an amount which is no more than twenty percent (20%) compounded above the maximum permitted 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 Subsection a. of this Section 4.7 only by an affirmative vote of two-thirds (2/3) of the vote of the Members in attendance, who are voting in person or by proxy, at a meeting duly called for such purpose.

c. The board may fix the annual assessment at any amount not in excess of the maximum amounts set forth in this Section 4.7.

d. Declarant shall not be bound by any assessment under this Article on any Lot owned by it.

**ARTICLE 5**

**MAINTENANCE**

**Section 5.1 Maintenance of Lots and Improvements; Lien.** Each Owner (other than Declarant) shall keep all Lots owned by such Owner, 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 exterior care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If in the opinion of the Architectural Committee ("Committee"), any Owner fails to perform the duties imposed by the preceding sentence, the Committee, after fifteen (15) days written notice to such owner to remedy such default, shall have the right, through its agents and employees, to enter upon the Lot or Lots involved and to repair, maintain, repaint, remove, and restore such Lot or Lots or such improvements, and the cost thereof (hereinafter sometimes called the "Maintenance Charge") shall be a binding personal obligation of such Owner and the cost may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in the following manner: the Committee may record an Affidavit of Nonpayment of Maintenance Charge in the office of the Register of Deeds of Sedgwick County, Kansas, stating: (a) the legal description of the Lot upon which the lien is claimed, (b) the name(s) of the Owner(s) of the Lot, and (c) the amount of the Maintenance Charge which is unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the Lot whether

arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, saving and excepting only such liens for taxes and other public charges as are by applicable law made superior.

**Section 5.2 Liability Insurance.** The Board shall obtain a policy or policies of liability insurance insuring the Board, the Association and its officers and employees, against any liability to the public or to the Owners and their invitees or tenants incident to the ownership and/or use of the property and including the personal liability exposure of the Owners incident to their being a member of the Association, but excluding such liability of such Owners arising from their ownership and occupancy of the individual Lots. Limits of liability and coverages shall be upon such terms and conditions as the Board shall deem appropriate.

**Section 5.3 Other Insurance.** The Board shall obtain and maintain such other insurance including, but not limited to, fidelity coverage, directors' and officers' liability insurance, as the Board may determine or as may be requested from time to time by majority vote of the Members of the Association.

## ARTICLE 6

### ARCHITECTURAL CONTROL

**Section 6.1 Approval Required.** No residence, building, fence or other structure or improvement shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein or thereto be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Committee, its agents, assignees or successors. Two sets of complete plans and specifications (hereafter, "the building plans" or "the plans") must be submitted to the Committee for review. The Committee will accept or reject such plans based on its determination of whether the plans evidence a harmony of external design and location in relation to surrounding structures and topography, and whether the plans are in compliance with the applicable terms and conditions of this Declaration, as same may be amended from time to time. For purposes of this Declaration, "building plans" is defined to mean all plans for any home, residence, or addition thereto, including any fences, structures, attachments and outbuildings of any kind whatsoever. All building plans must be submitted to the Committee not later than 35 days prior to the anticipated construction commencement date. The Committee will have 30 days in which to review the building plans submitted. If no response is made by the Committee, within 30 days of its receipt of such plans, the building plans will be deemed to have been approved by the Committee for all purposes herein. Proof of delivery of the plans to the Committee will be evidenced by a signed receipt by an authorized representative of the Committee where the Plans were hand delivered; by facsimile acknowledgment from the Committee; or by a return receipt if mailed by mail. Any plans which pertain exclusively to an interior remodel, and do not affect the outward appearance or the



exterior structure of an already constructed home, are excluded from the definition of building plans for purposes of this Declaration.

The Committee may, subject to the approval of the Board, develop and promulgate policy guidelines for the application of the design and review provisions. The policy guidelines may include (a) review procedures; (b) aspects and objectives of review; and (c) principles and criteria used as standards in determining the achievement of the required objectives. The policy guidelines may also include specific design practices that, although optional, are generally acceptable methods for achieving the required objectives in particular design problems frequently encountered. The policy guidelines are intended to assist the Committee and the Owners in the ongoing process of community design. They may be modified and supplemented from time to time, on due notice to the Owner and subject to the approval of the Board.

The provisions of this Section shall be applicable to Declarant only with respect to Lots which are improved with residences which are or have been occupied.

**Section 6.2 Form of Plans and Specifications.** Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but in any event shall include: (a) detailed plans showing elevations of all sides, detailed specifications and a site plan of the Lot showing the nature, exterior color scheme, kind, shape, height, materials and location with respect to the particular Lot (including proposed front, rear and side setbacks) of all structures, the location thereof with reference to structures on adjoining portions of the Lot, and the number and location of all parking spaces and driveways on the Lot; and (b) a grading plan for the particular Lot showing the building pad elevation and the Lot corner elevations (both existing and proposed final elevations).

**Section 6.3 Retention of Approved Plans and Specifications.** Upon approval by the Architectural 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 Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

**Section 6.4 Removal and Alteration of Structures; Lien.**

(a) 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 Architectural Committee pursuant to the provisions of this Article, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein, and, upon written notice from the Committee, any such structure so altered, erected, placed, or maintained upon any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

(b) 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 Committee shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation, and the cost thereof shall be a binding, personal obligation of such Owner and the cost may mature into a lien (enforceable in the same manner as a mortgage) upon the Lot(s) in question in the following manner: The Committee may record an Affidavit of Nonpayment of Removal or Alteration Charges in the office of the Register of Deeds of Sedgwick County, Kansas, stating: (i) the legal description of the Lot upon which the lien is claimed, (ii) the name(s) of the Owner(s) of the Lot, and (iii) the amount of the Removal and Alteration Charges which are unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the Lot whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

(c) In the event a lien is obtained pursuant to this Section and thereafter the Removal or Alteration Charges plus interest at the rate of fifteen percent (15%) per annum shall be fully paid, the Committee shall within ten (10) days following payment file with the Register of Deeds of Sedgwick County, Kansas, an affidavit of Payment of Removal or Alteration Charges which Affidavit shall: (i) refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied, (ii) state the legal description of the Lot affected, and (iii) state the name(s) of the Owner(s) of the Lot. The recording of the Affidavit of Payment of Removal or Alteration Charges shall fully and completely release the lien referred to in said Affidavit and said Affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged.

(d) In the event of any transfer, sale or assignment of any Lot or Lots to a bona fide purchaser, and in the event that no Affidavit of Nonpayment of Removal or Alteration Charges has been recorded as provided in this Section prior to such transfer, sale or assignment, any such Affidavit filed subsequent to the above-referenced transfer, sale or assignment shall be invalid and unenforceable.

**Section 6.5 Certificate of Compliance.** Upon completion of the construction or alteration of any structure in accordance with plans and specifications approved by the Architectural Committee, it shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such structure and the Lot on which such structure is placed, and stating that the plans and specifications, the location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith. Preparation and recording of such Certificate shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated and as to any purchaser or encumbrancer

in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all structures on the Lot, and the use or uses described therein, comply with all the requirements of this Declaration as to which the Committee exercises any discretionary or interpretive power.

**Section 6.6 Right of Inspection.** The Architectural Committee or 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 Committee, nor any such agent, shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

**Section 6.7 No Liability.** Neither the Architectural Committee, nor any member, agent, or employee thereof, nor the Association nor its Board of Directors 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 or functions under this Article 6.

**Section 6.8 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 this Declaration hereof but without the necessity of filing any formal amendment to this Declaration. Accordingly, inquiry must be made of the Architectural Committee to determine current policy guidelines prior to undertaking any improvements to any Lot.

- a. There shall be no rock or "natural landscape" yards and all yard areas, exclusive of improvements, shall be at least eighty percent (80%) grass.
- b. All roofs shall be architectural grade composition shingles or equivalent in a weathered wood or equivalent color, as specifically approved in writing by Declarant or the Committee.
- c. There shall be no underground homes.
- d. In the event of the construction of any retaining walls the plan and materials utilized must be previously approved in writing by the Committee.
- e. All basketball goals shall be either white or plexiglass. No "home-made" basketball backboards or supports shall be permitted. All basketball goals and supports shall be first approved by the Committee. Portable or movable high quality, commercially manufactured basketball goals in black are permitted without prior approval.

- f. All recreation and play equipment shall be located in the rear of any Lot except for basketball goals.
- g. There shall be no above-ground swimming pools.
- h. No storage sheds shall be permitted except as may be specifically approved by the Committee as to design and materials. Any approved out-building shall be constructed of the same material as the home.
- i. All vegetable gardens shall be in the back yards only.
- j. Dog runs must be screened from view from neighboring homes with fencing or other appropriate material.
- k. All exterior wood surfaces on homes (exclusive of redwood, cedar or other decking materials approved by the Committee) must be painted, or stained and sealed.
- l. All wood fences shall be of the "good neighbor" type where the support posts and stringers face the Lot upon which such fence is being constructed.
- m. Any temporary covering of a swimming pool, tennis court, patio, or otherwise, of a rigid or "bubble" type shall be deemed a structure that is subject hereto.
- n. Bay or bow windows or daylight windows may exceed setbacks by not more than 3 feet, if allowed by applicable building codes.
- o. Pad and lot corner elevations will be set by Declarant's engineer and any deviation therefrom and any resulting damage will be the responsibility of the Owner.
- p. Lawns shall be mowed on a regular basis at an appropriate height so as to maintain a neat appearance.
- q. No Christmas lights shall be lighted before Thanksgiving; Christmas lights shall be taken down no later than March 15 of the following year.
- r. All flagpoles and the type of flag that may be flown must be first approved by the Committee.
- s. No window shall contain any reflective material such as aluminum foil.
- t. All firewood stacks in excess of two cords of wood shall be screened from view from neighboring lots.

u. All forms of sculpture or "yard art" must first be approved by the Committee.

**Section 6.9 Master Drainage Plan - Violation and Enforcement.** As part of the planning process, there has been established for the Evergreen Addition, which includes the Evergreen Subdivision, a master drainage plan which plan includes appropriate surface water drainage. Each Owner of a Lot and such Owner's builder shall be responsible for compliance therewith. Construction, dirt berming or landscaping which impairs the drainage or violates the master drainage plan must be remedied by such Owner at such Owner's sole cost and expense as soon as possible but no later than 14 days after the impairment is first noticed whether noticed by Owner, Declarant, or any other Owner. It shall not be Declarant's responsibility to enforce compliance with the master drainage plan and all other Owners in the Evergreen Subdivision shall have the right to enforce the same against any other Owner.

## ARTICLE 7

### **GENERAL COVENANTS AND RESTRICTIONS**

**Section 7.1 Structures; Division of Lots; Utilities; Trailers; and Fences.** Without the prior written approval of the Committee:

- (a) No previously approved structure shall be used for any purpose other than that for which it was originally designed, and no used or previously constructed residence or building of any kind shall be moved or placed, either in sections or as a whole, upon a Lot.
- (b) No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise, except by Declarant in its sole discretion.
- (c) No facilities, including poles and wires, for the transmission of electricity, telephone messages, and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind including satellite receiving antennas may be so maintained upon any Lot unless completely enclosed within the attic of the residence, except by Declarant during the construction period for any home. Notwithstanding the foregoing, certain satellite receiving antennas of the approximate size of forty inches in diameter or less, if appropriately screened and/or landscaped so that the same are unobtrusive and not readily apparent from adjacent property, may be permitted if previously approved in writing by the Committee.
- (d) No boat, trailer, camper, recreational vehicle, semi-truck or tractor, farm equipment, mobile home, truck of any kind, (except for a pickup truck of 3/4 ton or less),

inoperable or irregularly used automobile or similar items shall be stored in and on any street, or in the open on any Lot.

(e) No fence or wall shall be erected on any Lot, except those specifically approved as to location, size, type, and material by the Committee. Certain Lots have been designated as Lake Lots (being Lots 1 through 25 in Block 7). Only preapproved wrought iron fences constructed pursuant to specifications provided by the Committee will be permitted along the rear of the Lake Lots. Privacy fences immediately adjacent to patios which are appurtenant to a home constructed on a Lake Lot shall be permitted upon the prior approval of the Committee. All other lots in the Addition may utilize wrought iron fences or "good-neighbor" type fences as defined in Article 6.8 (1) herein provided that the same shall not exceed six feet (6') in height.

(f) No Owner of any Lot shall perfect a domestic or other water right, on any Lot within the Evergreen Subdivision.

(g) No Lot shall be used in whole or in part for the storage of trash of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the other Owners within the Evergreen Subdivision.

**Section 7.2 Parking and Vehicle Restrictions.** Each Lot shall have four (4) off-street parking spaces. No noisy, smoky, or unlicensed vehicles shall be operated within the Addition or stored in or on any street, or in the open on any Lot. Garages shall be used to park permitted vehicles, and not for storage. No car maintenance (other than emergency work) shall be permitted on any Lot except with the prior written consent of the Board. Forty-eight (48) hours after notice has been personally delivered to the Owner of any Lot by an agent of the Association or placed on the windshield of a vehicle or forty-eight (48) hours after notice has been mailed to the address of the registered owner or owners of a vehicle parked, stored, or maintained on any Lot, in violation of the provisions of these Covenants, the Owner shall be deemed to have consented to the removal of the vehicle from the Addition, and the Association or its agent shall have the authority to tow away and store any such vehicle. Charges for such towing and storage shall be paid by the Owner responsible for the presence of the vehicle, and each Owner expressly indemnifies and holds harmless the Association for any liability whatsoever related to the removal, towing and disposition of such vehicle.

**Section 7.3 Lawns and Trees.** All lawns shall be seeded or sodded at the first available planting time after completion of the residence. The type of grass utilized shall be in accordance with standards adopted by the Committee. No tree having a diameter of three (3) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the Committee, except such trees as are

removed by Declarant during its initial development of the subdivision and/or during its construction of a residence on any lot. The Committee in its discretion may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Addition. The Committee may designate certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section, the Committee and its agents may come upon any Lot during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the Committee nor its agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Notwithstanding anything in this Declaration to the contrary, prior to the commencement of construction on any Lot owned by Declarant or any Common Area within the Addition, Declarant may remove some or all of the trees located on any such Lot or Common Area for the development of the Common Area, or other Lots located within the Addition owned by Declarant. Declarant shall have no liability or responsibility for trees that are removed from any such Lots.

**Section 7.4 Animals.** No birds, reptiles, animals, fowl or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Addition without the express written consent of the Committee. The Committee may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be confined at all times to the residence site and must be kept on a leash when outside the residence site.

**Section 7.5 Signs.** No sign or other advertising device of any nature shall be placed upon any Lot except as provided herein. The Committee may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed. The Committee may remove nonconforming signs upon three days notice to the Owner, such removal to be at the cost of such Owner.

**Section 7.6 Temporary Buildings; Excavations.** No temporary building, trailer, garage, basement, tent, outbuilding, or building in the course of construction shall be used temporarily or permanently as a residence on any Lot. No excavations shall be permitted except when necessary for construction of a residence or improvement and such construction is diligently completed.

**Section 7.7 No Storage; Trash.** No lumber, metals, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on any Lot, except building materials may be stored on a Lot during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on

the Lot so as to provide access to persons making such pick-up. At all other times such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, and type of containers permitted and the manner of storage of the same.

**Section 7.8 Pipes.** No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, except hoses used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for, removing or storage of oil or other hydrocarbons, minerals, gravel or earth.

**Section 7.9 Committee May Trim or Prune.** The Committee 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 Committee, 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 fifteen (15) days prior written notice of such action.

**Section 7.10 Garages.** Garage doors which face on a street shall be kept closed at all times except for purposes of entry, exit, or maintenance.

**Section 7.11 Sight Lines.** No fence, wall, hedge, tree or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the 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 (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree or shrub shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

**Section 7.12 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 neighborhood.

**Section 7.13 Maintenance of Drainage Channels and Swales.** Each Owner shall maintain, mow, and keep in good repair and condition any drainage channels and swales located on any Lot owned by such Owner, in accordance with the master drainage plan.

**Section 7.14 Home Professions and Industries.** No profession, business or home industry shall be conducted in or on any part of a Lot or in any improvements thereon without the specific written approval of the Committee. The Committee, in its discretion, upon



consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Committee, to be compatible with a high quality residential neighborhood.

**Section 7.15 Declarant's Exemption.** Nothing contained in this Declaration will be construed to prevent the construction, installation, or maintenance by Declarant or its agents of structures, improvements, or signs deemed necessary or convenient by Declarant, in its sole discretion, for the development or sale of property within the Addition.

**Section 7.16 Laundry and Machinery.** No clothing or any other household fabric shall be hung in the open on any Lot except with specific written approval of the Committee. No machinery shall be placed or operated upon any Lot except such machinery as is usual in the maintenance of a private residence.

**Section 7.17 Land Use.** None of the Lots may be improved, used, or occupied for other than the uses designated by the recorded plat thereof and applicable zoning regulations.

**Section 7.18 Set-Back Requirements.** No building, structure, or other improvement may be constructed or maintained on any Lot in violation of any set-back lines shown on the recorded plat of the Addition; provided, that the foregoing set-back requirements shall not be applicable to any improvement, building, or structure constructed below the surface level of the ground, or to swimming pools constructed in the ground, or to any tennis courts, paddle tennis courts or similar sports surfaces constructed at ground level, but nothing contained in this provision shall be deemed to permit the installation or operation of any lighting equipment in such areas, or to permit the installation of such improvements or structures without the express written consent of the Architectural Committee.

**Section 7.19 Utility Service.** All lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, must be contained in conduits or cables installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Committee. Temporary power or telephone structures incident to construction activities are permitted but only with the prior written approval of the Committee and only for a reasonable time.

**Section 7.20 Drainage.** No Owner may interfere with or obstruct the drainage pattern over the Addition from or to any other Lot as may be established by the City of Wichita or Declarant.

**Section 7.21 Hazardous Wastes.** No Owner may permit any hazardous waste or substance to be produced, stored, dumped, or generated on the Addition or the Owner's Lot or residence.

**Section 7.22 Repair of Building.** No building or improvement on the Addition shall be permitted to fall into disrepair. Each building and improvement must at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner.

**Section 7.23 Motor Vehicles.** No motor vehicles of any type other than maintenance vehicles shall be operated on the Common Area or the sidewalks and running or bicycle paths, if any, located in the Common Area.

**Section 7.24 Restrictions not Exclusive.** The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease, or by the rules and regulations of the Association as such are adopted from time to time. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall be taken to govern and control.

## ARTICLE 8

### ENFORCEMENT

**Section 8.1 Enforcement.** The Architectural Committee, Declarant, The Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Committee, Declarant, The Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

## ARTICLE 9

### ADDITIONAL LAND

**Section 9.1 Additional Land.** Declarant may, from time to time, annex additional real property adjacent and/or contiguous to the Addition covered by this Declaration, and thereby subject the same to all of the terms, provisions and conditions of this Declaration, by the execution and filing for recordation with the Register of Deeds of Sedgwick County, Kansas, of an instrument expressly stating an intention so to annex and describing such additional real property to be so annexed. During that ten (10) year period commencing with the date of the recording of this Declaration, Declarant, its successors or assigns, may annex such additional real property in its absolute discretion. From and after the termination of said ten (10) year period, such additional real property may be annexed to the Addition provided that each such annexation is approved in writing by two-thirds (2/3) of the votes of the Owners entitled to vote.

**ARTICLE 10**

**REPLAT**

**Section 10.1 Replat.** Declarant shall have the right, power and authority to effect a lot split or to replat any or all of the Evergreen Subdivision and the lots resulting from such replat or lot split shall be subject to this Declaration.

**ARTICLE 11**

**EASEMENTS**

**Section 11.1 Utility Easements.** Declarant, for itself and the provider utility or service company, has reserved the easements, as shown on the recorded plat, upon, over, and under the Addition for the purpose of installing, replacing, repairing, and maintaining all utility equipment, service lines, and systems, as these are installed and located on the Addition. The preceding sentence shall not be deemed to impose an obligation on Declarant to install, replace, repair, or maintain the services, equipment, or lines. No utility or service systems and lines may be installed or relocated on the Addition, except as approved by Declarant or the Committee. Once Declarant has transferred control of the Association to the Members as more specifically set forth in the Association's Bylaws, Declarant will be deemed to have transferred to the Association its interests, if any, in such utility easements. Declarant expressly reserves unto itself the sole authority to enter into any agreements on behalf of the Evergreen Subdivision and/or Evergreen Addition and lots therein, to designate the service provider for gas and electric service for use within the development.

**Section 11.2 Easements in Favor of Declarant and of the Association.** Declarant specifically reserves unto itself, its successors and assigns, and hereby grants to the Association, a perpetual, nonexclusive easement to enter upon any Lot on which is situated an entrance treatment, landscaping feature, fence or wall installed or erected by Declarant or the Association in order to maintain, improve, repair and/or replace the same. Declarant also specifically reserves unto itself, its successor and assigns, and hereby grants to Association the right of ingress and egress to cross any Lot adjacent to the Common Areas for the purposes of maintaining the Common Areas as more fully described in Section 2.3 hereof. The preceding sentences shall not be deemed to impose an obligation on Declarant to install, replace, repair or maintain an entrance treatment, landscaping feature, fence or wall. Once Declarant has transferred control of the Association to the Members, as more specifically set forth in the Bylaws of the Association, Declarant will be deemed to have transferred to the Association its remaining rights to and under such easements.

**ARTICLE 12**

**MISCELLANEOUS**

**Section 12.1 Successors and Assigns.** Any reference in this Declaration to "Declarant" will include any successors or assignees of Declarant's rights and powers. Any assignment will be evidenced by a recorded instrument executed by Declarant and its successor or assignee.

**Section 12.2 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 12.3 Term; Amendment.** This Declaration, as amended from time to time, shall run with and bind the land for a term of twenty (20) years from the date of its recordation, after which time it shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended by an instrument signed by the Owner(s) of not less than seventy-five percent (75%) of the votes in the Addition and recorded in the office of the Register of Deeds of Sedgwick County, Kansas.

**Section 12.4 Additional Right of Amendment.** Anything in Section 12.3 to the contrary notwithstanding, Declarant, without the vote of the Owners, reserves the right to amend this Declaration if requested or required by the FHA, VA, FNMA, or any other agency with whom Declarant elects to do business as a condition precedent to the Agency's approval of this Declaration or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or purchasing loans secured by any Lot. Any amendment will be effected by Declarant recording a Certificate of Amendment duly executed and acknowledged by Declarant specifying the agency or the lending institution requesting the amendment and setting forth the requested or required amendment. Recordation of this Certificate will be deemed conclusive proof of the agency's or institution's request or requirement, and the Certificate, when recorded, will be binding upon the Subdivision.

**Section 12.5 Rule Against Perpetuities.** If any of the provisions, interests, privileges, covenants or rights created by this Declaration are determined by a court of competent jurisdiction to be unlawful, void, or voidable for violation of the rule against perpetuities or any related rule, the provisions, interests, privileges, covenants or rights will be construed to continue until 21 years after the death of the survivor of the now living descendants of the President of the United States on the date this Declaration is recorded.

