

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR OLATHE TRAILS, A SUBDIVISION IN OLATHE,  
JOHNSON COUNTY, KANSAS**

This declaration, made on the date hereinafter set forth by City Wide Development Company, Inc., hereinafter referred to as "Declarant."

WITNESSETH:

Whereas, Declarant is the owner of certain property in the County of Johnson, State of Kansas, which has been recorded as Olathe Trails, a subdivision in Johnson County, Kansas and which is more particularly described as:

DESCRIPTION 1<sup>ST</sup> PLAT:

This is a subdivision of all that part of the south half of the southwest quarter of Section 20, Township 13, Range 24, Olathe, Johnson County, Kansas, more particularly described as follows: Beginning at the Southwest corner of said half of quarter section: thence north 00 degrees 27minutes 15 seconds west, along the west line of said half of quarter section 1325.40 feet to the Northwest corner of said half of quarter section; thence North 89 degrees 57 minutes 45 seconds East, along the North Line of said half of Quarter section, 788.35 feet; thence South 00 degrees 00 minutes 00 seconds East 136.46 feet; thence South 63 degrees 30 minutes 00 seconds East 64.46 feet; thence South 15 degrees 12 minutes 52 seconds West 50.85 feet; thence South 24 degrees 58 minutes 46 seconds West 90.16 feet; thence South 18 degrees 40 minutes 00 seconds west 508.85 feet; thence South 06 degrees 04 minutes 47 seconds East 135.54 feet; thence South 11 degrees 20 minutes 00 seconds East 140.0 feet; thence South 78 degrees 40 minutes 00 seconds West 95.00 feet; thence South 11 degrees 20 minutes 00 seconds East 180.02 South 90 degrees 00 minutes 00 seconds West 565.19 feet to the point of beginning. Containing 20.357 acres.

DESCRIPTION 2<sup>ND</sup> PLAT:

This is a subdivision of all that part of the South half of the Southwest Quarter of Section 20, Township 13, Range 24, Olathe, Johnson County, Kansas, more particularly described as follows: Beginning at a point on the South line of said 1/2 of 1/4 Section, said point of beginning being 565.19 feet East of the Southwest corner thereof: Thence North 11 degrees -20'-00" West 180.02 feet; thence North 78 degrees thence north 6 degrees -04'-47" West 135.54 feet; thence North 18 degrees -40'-00" East 508.85 feet; thence North 24 degrees -58'46" East 90.16 feet; thence North 15 degrees -12'-52" East 50.85 feet; thence North 63 degrees -30'-00" West 64.46 Feet; thence North 26 degrees -30"-00" East 90.00 Feet; thence North 00 degrees -00"00" West 136.46 feet to a point on the North Line of Said 1/2 of 1/4 Section; thence North 89 degrees -57'45" East along the North line of said 1/2 of 1/4 section 665.01 feet; thence South 00 degrees -00'-00" east

29.30 feet; thence North 89 degrees -57'-45" East 90.00 Feet; thence South 27 degrees -05'-54" East 124.72 Feet; thence South 27 degrees -14'-37" East 82.18 Feet to a point on a curve; thence in a Northeasterly direction along a curve to the right (having a radius of 375.00 feet) 78.46 feet; thence South 24 degrees -15'-20" East 140.00 Feet; thence South 58 degrees -45'-01" West 72.49 feet; thence North 83 degrees -48'-00" West 63.30 Feet; thence South 6 degrees -12'-00" West 230.00 feet; thence South 28 degrees -13'-34" East 32.89 feet; thence South 5 degrees -01'-39" West 93.00 feet to a point on a curve; thence in a Southeasterly direction along a curve to the right(having a radius of 387.96 Feet) 25.00 Feet; thence South 8 degrees -43'-12" West 139.72 feet; thence South 33 degrees -08'-08" East 33.36 feet; thence South 16 degrees -18'-00" West 90.00 feet; thence South 73 degrees -42'-00" East 20.00 feet; thence south 16 degrees -18'-00" West 287.33 feet; thence south 00 degrees -00'-00" West 116.77 feet to a point on the South line of said ½ of ¼ section; thence south 90 degrees -00'-00" West 993.73 feet to the point of beginning. Containing 29.084 Acres.

AND WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions and conditions, shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to benefit of each owner thereof.

## ARTICLE 1 DEFINITIONS

- 1.1 "Association" shall mean and refer to Olathe Trails Homes Association, Inc.
- 1.2 "Properties" shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 1.3 "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the members of the Association. The common areas to be owned by the Association at the time of the conveyance of the first lot in the first plat of seventy seven lots are as described as follows: Tracts A-B-C-D-E=F-G shown on recorded plat. The common areas to be owned by the Association in the second plat of one hundred thirty five lots are described as follows: A-1, C-1, D-1, E-1, F-1, H, J, K, L as shown on recorded plat.

Additional land within the area described in Document #972127 in volume 945, Page 150 of the land records of Registration of Deeds, Johnson County, Kansas, may be annexed by the Declarant without the consent of members within 10 years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

- 1.4 "Lot" shall mean and refer to that parcel of a lot shown on the recorded subdivision plat of properties to be conveyed for the purpose of a single family dwelling and all structures erected thereon.

- 1.5 "Member" shall mean and revert to every person or entity who holds membership in the Association.
- 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 which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.7 "Declarant" shall mean and refer to its successors and assigns if such successors and assigns should acquire more than one undeveloped lot from the Declarant for the purpose of development.

## **ARTICLE 2 MEMBERSHIP**

- 2.1 Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be sole qualification for membership.

## **ARTICLE 3 VOTING RIGHTS**

- 3.1 The Association shall have two classes of voting membership:
- 3.2 Class A. Class A members shall be all those Owners as defined in Article 2 with the exception of the Declarant. Class A members shall be entitled to vote one vote for each lot in which they hold the interest required for membership by Article 2. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
- 3.3 Class B. Class B members shall be the Declarant. The Class B members shall be entitled to three votes for each lot in which it holds the interest required for membership by Article 2, provide that the Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership or on October 1, 1980, whichever first shall occur.

## **ARTICLE 4 PROPERTY RIGHTS**

- 4.1 Members' Easement of Enjoyment. Every member shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every assessed Lot, subject to the following provisions:
  - 4.1.1 The right of the Association to limit the number of guests of members
  - 4.1.2 The right of the Association to charge reasonable admission and other fees for the use of any recreational facility, if any, situated upon the Common Area.

- 4.1.3 The right of the Association, in accordance with its Articles and By-Laws , to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgage in said properties shall be subordinate of the rights of the homeowners hereunder.
- 4.1.4 The right of the Association to suspend the voting rights and right to use the recreational facilities by a member for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 90 days for any infraction of its published rules and regulations.
- 4.1.5 The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast 2/3 of the votes of the Class A membership and 2/3 of the votes of the Class B membership, if any, has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than 30 days nor more than 60 days in advance of the vote.
- 4.2 Delegation of Use. Any member may delegate, in accordance with the By-Laws, his right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.
- 4.3 Title to the Common Area. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Area to the Association.
- 4.4 Mortgage Liens on Common Area and Release Thereof. Except for existing mortgages or deeds of trust, existing easements, restrictions, and rights of way, if any, of record, the easements and rights of way dedicated and/or reserved on the recorded plat of the properties, taxes for the current year and subsequent years, and the provisions of this Declaration, the Common Area conveyed to the Association pursuant to Section 4.3 shall be free and clear of all liens and encumbrances.

## **ARTICLE 5 COVENANT FOR ASSESSMENTS**

- 5.1 Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the properties, hereby covenants and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Association:
- (1) Annual assessments or charges
  - (2) Special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as herein-after provided. The annual and special assessments, together with such interest thereon and costs of collection thereof, as herein-after provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

5.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents in the Properties and particular for the improvement and maintenance of the Common Areas.

5.3 Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$150.00 per Lot.

5.3.1 From and after January 1, of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum annual assessment for the previous year without a vote of the membership. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the 5% by a vote of 2/3 of the members of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting for setting forth the purpose of the meeting.

5.3.2 After consideration of the current maintenance costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

5.4 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or improvements, unexpected repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of 2/3 of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days no more than 60 days in advance of the meeting setting forth the purpose of the meeting.

5.5 Uniform Rate. Both annual and special assessments for capital improvements must be fixed at a uniform rate for all Lots and be collected on a monthly basis.

5.6 Quorum for Any Action Authorized Under Sections 5.3 and 5.4. At the first meeting called, as provided in Sections 5.3 and 5.4 hereof, the presence at the meeting of members or of proxies entitled to cast 60% of all votes shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the quorum required in any such subsequent meeting shall be ½ of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

5.7 Date of Commencement of Annual Assessments: Due Dates. The annual assessment provided for herein shall commence as to all Lots on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The board of Directors shall fix the amount of the annual assessment against each Lot at least 30 days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to the Owner subject thereto. The due dates shall be established by the Board of Directors. The

Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for issuance of these certificates. Such certificates shall be conclusive evidence of payment of any assessments therein stated to have been paid.

- 5.8 Effect of Nonpayment of Assessments; Remedies of the Association: Any assessment not paid within 30 days after the due date shall bear interest from the due date of the rate of 8% per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or Abandonment of his lot.
- 5.9 Subordination of the Lien to Mortgages. The lien of all assessments provided for herein, shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not effect any assessment lien. The sale or transfer of any Lot, pursuant to a decree of mortgage foreclosure or any proceeding in Lieu of mortgage foreclosure, shall extinguish the lien of all assessments (except the special assessment for fire and extended coverage insurance) as to payment thereof which shall become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from Liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE 6 ARCHITECTURAL CONTROL

- 6.1 No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein 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, as to harmony of external design and location in relation to surrounding structures and topography, by the Architectural Control Committee composed of three members appointed by the Board of Directors of the Association. The initial Architectural Control Committee is composed of the following three members: Frank L. Oddo, Elizabeth A. Oddo, and David A. Wilner. . In event said Board or it designated committee fails to approve or disapprove such design and location within 60 days after said plans and specifications have been submitted to it, approval will not be required and this Article will deem to have been fully complied with. Approval of design is not required for the original building on each Lot.

- 6.2 It being the intent and purpose of these restrictions to control the type of fencing and standardize same for protection of all owners, the only type of fencing along the side and rear lot lines that will be approved for this subdivision is a standard chain link fence of maximum height of 48 inches.

Special fencing of a specific nature such as privacy fencing at a patio or screen type fencing at specific locations in the common areas to provide screening and privacy at playgrounds may be built if plans and specifications are submitted to the Architectural Control Committee as outlined herein.

No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved.

- 6.3 It being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be

produced on the date these covenants are recorded for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall not be less than 912 square feet for one-story dwelling, nor less than 560 square feet for a dwelling of more than one story.

- 6.4 No building shall be located on any lot nearer to the front line or nearer to the side of the street than the minimum building setback lines shown on the recorded plat. In any event no building shall be located on any lot nearer than 22 feet to the front lot line, or nearer than 15 feet to any side line.
- 6.5 Total (two sides) side yard shall be a minimum of 20% of the front yard width. No building shall be erected nearer than 3 feet to any interior lot line.
- 6.6 For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of the building, provided, however that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.

## ARTICLE 7 USE RESTRICTIONS

- 7.1 Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within the Properties without the written permission of the Board of Directors.
- 7.2 Building or Uses Other than For Residential Purposes. No building or structure of any sort may ever be placed, erected or used for business, professional, trade, or commercial purposes on any lot or in the Common Area. Provided, however, this prohibition shall not apply:
- (a) To any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to users within the Properties, or
  - (b) To any buildings or portion of a building used by Declarant, or its agents or contractors, for a manager's office or a sales office, or temporary construction building.
- 7.3 Miscellaneous Use Restriction. No truck, trailer, boat, equipment or machinery, or cars not in daily use shall ever be parked, located or otherwise maintained on any Lot, parking area or street in the Properties. Automobiles shall be parked only in designated parking areas and subject to the provisions of regulations adopted by the Association.
- 7.4 Livestock and Poultry Prohibited. No animals, livestock or poultry of any kind shall be raised or kept on any building site in the Properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio area. No such pet will be kept, bred or maintained for commercial purposes.
- 7.5 Noxious Activity. No noxious or offensive activity shall be carried on within the Properties, nor shall any trash ashes or other refuse be thrown, placed or dumped upon any vacant building site, nor shall anything ever be done which may be or become an annoyance or nuisance to the neighborhood.
- 7.6 Temporary structures. No trailer, basement, tent, shack, barn, garage, or other outbuilding shall at any time be used for human habitation, temporary or permanently, or shall any structure of a temporary character be used for human habitation. Provided, however, nothing herein contained shall restrict City Wide Development Co., Inc. or its agents or

contractors, from using a temporary real estate office on the Properties or any portion thereof to be used during the period of the sale of the property with Olathe Trails. City Wide Development Company, Inc. may also erect and maintain model homes for sales purposes and may operate such office or offices therein for so long as they deem necessary for the purposes of selling, property within the subdivision.

## **ARTICLE 8 EASEMENTS**

- 8.1 **Utility Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat, and further, until the last lot in the Properties is sold by Declarant, Declarant reserves a blanket easement over the Common Area for the installation, maintenance, repair, replacement and upgrading for utilities. Within these easements, no structures, plantings or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities. This requirement is not intended to prohibit paving or construction of walls or fences across the easement where such construction does not unduly interfere with the operation and maintenance be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority, utility company, or the Association is responsible.
- 8.1.1 Any Easements required by or for any utility, district, company, city or other legal entity over, across, under or through the Common Area may be granted by the Declarant (with consent of holders of recorded mortgages, if any, on the Common Area) prior to the sale of the last Lot by the Declarant.
- 8.2 **Access Rights throughout the Common Area.** Access rights are reserved for employees of the utility companies serving the homes within the Properties; and for government units that provide customary services such as fire protection, police protection, water, water service, health service, etc., all for the purpose of conducting official business, throughout areas designated as Common Area.
- 8.3 **Access Rights To Owners.** Access rights of Owners, members of their family, and guests to their Lots across Common Area are hereby granted. Access rights of Owners, members of their family and guests to common facilities, if any, are hereby granted subject only to such rules and regulations as the Board shall from time to time pass.

## **ARTICLE 9 GENERAL PROVISION**

- 9.1 **Enforcement.** The Association, or any owner, shall have the right to enforce, by any proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens, easements, and charges now or hereafter imposed by the provisions of this Declaration. Failure by 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.
- 9.2 **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.
- 9.3 **Amendment.** The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefits or and be enforceable by the Association, or the Owner of any Lot, subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is recorded, after which said covenants shall be automatically extended for successive periods of 10 years.



The covenants and restrictions of this Declaration may be amended during the first year period by any instrument signed by not less than 75% of the Lot Owners. Any amendment must be properly recorded.

#### **ARTICLE 10 FHA-VA APPROVAL**

As long as there is a Class B Membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of the Common Area, and amendment of this Declaration of Covenants, Conditions and Restriction.