

Foxfire Addition

Derby, Sedgwick County, KS

Declaration of Covenants, Conditions and Restrictions of Derby Corporate Park - Foxfire Addition

Dated:	August 12, 2008	Recorded:	October 3, 2008 (2)
Dated:	December 23, 2008	Recorded:	December 24, 2008
Dated:	April 12, 2022	Recorded:	March 3, 2022 (Final Plat)
Dated:	April 12, 2022	Recorded:	May 16, 2022
Dated:	April 18, 2024	Recorded:	May 8, 2024

Foxfire Addition Bylaws: N/A **Signed:**
(Bylaws are not yet available. Please check with the on-site agent for updates.)

HOA Management Services is responsible for the oversight of restrictive covenants; all area questions (eg: fencing approval, exterior colors, area maintenance); collection of dues, etc. Please refer questions to:

*HOA Management Services
1900 E. Douglas – Suite #100, Wichita, KS 67214
316-351-7650 – Ext 215 terriw@homeownermgnt.com*

All information deemed to be accurate, but not guaranteed. Buyer(s) responsible for verification of all information.

Buyer(s) Signature(s): _____

Date: _____

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Sedgwick County
Register of Deeds - Tonya Buckingham
Doc.#/Flm-Pg: 30307182

Receipt #: 242579L
Pages Recorded: 23

Recording Fee: \$395.00

Cashier: vbunch

Authorized By: *Tonya Buckingham*

Date Recorded: 05/08/2024 10:56:30 AM



**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF FOXFIRE ADDITION**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FOXFIRE ADDITION ("Declaration") is made this 18th day of April, 2024, by Kick "N" Development Corp. (hereinafter referred to as "Declarant"), a Kansas limited liability company, for itself and its successors, grantees and assigns.

WITNESSETH:

WHEREAS, Declarant, and the undersigned, are the owners of the following described real property, to wit:

FOXFIRE ADDITION
An Addition to Derby,
Sedgwick County, Kansas

Such real property being hereinafter referred to as the "Property"; and

WHEREAS, Declarant deems it desirable to impose a general plan for the improvement and development of the Property and to adopt and establish covenants, conditions, easements and restrictions upon the Property and each and every Lot and portion thereof, and upon the use, occupancy and enjoyment of the Property, all for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property; and

WHEREAS, A not for profit association formed hereby (the "Association"), will be incorporated under the laws of the State of Kansas for the purpose of exercising the powers and obligations of the Association set forth herein.

NOW, THEREFORE, Declarant does hereby subject all of Foxfire Addition to the covenants, conditions, restrictions, easements, assessments and limitations set forth and contained in this Declaration, and Declarant hereby specifies and declares that this Declaration shall constitute covenants running with the land and shall be binding on Declarant, its successors, grantees and assigns, and on all

current and subsequent owners of all or any part of the Property, together with their respective grantees, heirs, executors, administrators, devisees, mortgagees, successors or assigns. This Declaration shall cover the following real property, as amended, currently described to wit:

Lots 1 through 42 inclusive, Block A;
Lots 1 through 15 inclusive, Block B;
Lots 1 through 27 inclusive, Block C;
Lots 1 through 8 inclusive, Block D;
Lots 1 through 14 inclusive, Block E;
Lots 1 through 31 inclusive, Block F;

and

Reserves A through K inclusive
All in the Foxfire Addition
An Addition to Derby,
Sedgwick County, Kansas

ARTICLE I DEFINITION OF TERMS

The terms used in this Declaration are defined as follows:

1.01. "Approved Builder" shall mean a contractor licensed by the City of Wichita or Derby and expressly approved in writing by Developer.

1.02. "Association" shall mean and refer to a not for profit association, to be incorporated under the laws of the State of Kansas, its successors and assigns.

1.03. "Building Site" shall mean any Lot or two or more contiguous Lots owned by a common Owner. An Owner may own a fraction of one Lot only if said fractional Lot is contiguous to one or more full Lots owned by a common Owner. All such contiguous Lots and fractional Lots owned by a common Owner shall be considered one Building Site.

1.04. "Common Area" shall mean any portion of the Property and all Improvements located thereon designated by the Developer or the Association for the common use and enjoyment of the Owners, specifically including all areas designated as "Reserve" areas on the recorded plat for the Property or any plat recorded in connection with any property added by Developer in the manner hereinafter provided. The Common Areas, once conveyed by Developer, shall be owned by the Association.

1.05. "Developer" shall mean and refer to Kick "N" Development Corp., its successors and assigns.

1.06. "Declaration" shall mean the covenants, conditions, restrictions, easements, assessments and limitations set forth and contained in this instrument and all attachments and amendments thereto.

1.07. "Improvement" shall mean and refer to any thing or device the placement of which upon any Lot or Building Site may affect the appearance of such Lot including, by way of illustration and not limitation, any building, garage, porch, shed, greenhouse, bathhouse, covered or uncovered patio, swimming pool, tennis court, basketball court/goal, clothes line, radio or television antenna, satellite dish, fence, arbor, trellis, pergola, gazebo, statuary, curbing, paving, wall, hedge, shrubbery, trees, signboard, or any temporary or permanent physical alteration to any Lot. The term "Improvement" shall also mean 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 any change in the grade of any Lot from that existing at the time of purchase of the Lot by each Owner.

1.08. "Lakeside Lots" shall mean Lots 1 through 27 inclusive of Block C, subject to the special restrictions as set forth in Section 7.20.

1.09. "Lot" shall mean and refer to each Lot as platted on the plat of Foxfire Addition to Derby, Sedgwick County, Kansas.

1.10. "Member" shall mean and refer to every person or entity that is the Owner of a Lot and thereby holds membership in the Association per Article II of this Declaration.

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

1.12. "Property" shall mean and refer to the property (as set forth above) within the FOXFIRE ADDITION, an Addition to Derby, Sedgwick County, Kansas, as well as any property added to the Property in the manner hereinafter provided.

1.13. "Residential Dwelling" shall mean an Improvement erected and maintained in conformance with this Declaration for private residential purposes and designed for occupancy by a single family. It shall not mean or refer to any apartment, flat, duplex or other multi-family dwelling even though intended for residential purposes.

ARTICLE II MEMBERSHIP IN THE ASSOCIATION

2.01. The Owners of all the Property together with the Owners of any other property that may from time to time be added to the Property in the manner hereinafter provided, shall be Members of the Association.

2.02. At a time within the sole discretion of Developer, the Association will be incorporated under the laws of the State of Kansas as a corporation not for profit.

2.03. Membership in the Association shall be limited to the Developer or Owners of Lots within the boundaries of the Property as it exists from time to time, as hereinafter set forth.

ARTICLE III DEVELOPER ACTING AS AND FOR ASSOCIATION

3.01. Until the Association is incorporated and thereafter until relinquished as set forth below, Developer shall have the right at its sole and exclusive option to perform the duties and assume the obligation of, levy and collect the assessments for, and otherwise exercise the powers herein given to the Association, in the same way and manner as though all of such powers or duties were hereby given directly to the Developer.

3.02. The Association contemplated by the terms of this Declaration shall not assume any of the rights herein provided for without the consent of the Developer and its relinquishment in writing of all or any portion of such rights or as otherwise provided in this Declaration.

3.03. The Developer may, by appropriate written instrument made expressly for that purpose, assign or convey to a third party or the Association any portion of or all of the rights, reservations and privileges reserved by it in this Article III and upon such assignment or conveyance being made, such third party or the Association shall exercise and assume such rights assigned in writing by the Developer.

ARTICLE IV VOTING RIGHTS

4.01. The Association shall have two (2) classes of voting membership, as follows:

Class A. Each Owner of a Lot in the Property (other than a Class B Member) shall be in a Class A Member of the Association. Each Class A Member shall be entitled to one vote for each Lot owned by him, her or it in fee simple title; provided, however, that until a Residential Dwelling is completed and occupied in good faith on a Lot, Developer shall be entitled to the vote of the Owner, and purchase of a Lot subject to this Declaration shall constitute the purchaser's proxy to Developer for the aforesaid purpose. When more than one person holds such

interest in any Lot, all such persons shall be members and 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 one Lot.

Class B. The Developer shall be a Class B Member. The Developer shall have the right to appoint a majority of the Board of Directors of the Association and shall have the right to approve and the power to veto any and all actions of the Association. Class B membership of the Developer shall continue until Developer and each Approved Builder own no land in the Property (including land added as set forth below) or until Developer relinquishes its Class B membership, whichever first occurs. For purposes of voting requirements herein, the Class B Member shall have twenty (20) votes for each Lot owned by it, in addition to the right to approve and the power to veto set forth above.

4.02. The voting rights of a Class A Member regarding issues of assessments and fees shall be suspended for any period during which any assessment described in this Declaration, including interest and fees, remains unpaid for that Class A Member.

(a) At any regular or special meeting of the Association, Members may cast their vote in person or by proxy, or by written assent.

(b) Except as provided in Articles IX and XV, issues presented by the Board of Directors to the Members for a vote, shall be ratified by an affirmative vote of a simple majority (51%) of the Members present in person or by proxy at a meeting specifically called for such purpose or by written assent.

(c) Unless the context clearly indicates to the contrary, decisions by the Association described herein shall require approval of the requisite percentage of Class A and Class B votes combined and not separate requisite percentages of each Class.

4.03. Notwithstanding the foregoing, the provisions of this Article IV shall be subject and subordinate to the provisions of Article III herein.

ARTICLE V LAND ENTITLED TO BENEFITS

5.01. No Lot shall be entitled to any of the benefits, improvements, or services provided by the Association unless the Owner thereof shall have subjected his, her, or its Lot to the terms of the Declaration and to the assessments herein provided for.

5.02. For purposes hereof, accepting title to a Lot within the Property after the recording of this Declaration shall satisfy the foregoing requirements.

ARTICLE VI

USE OF COMMON AREAS

6.01. The Owners of Lots within the Property shall have the exclusive right of the use of all Common Areas within the Property as it from time to time exists.

6.02. The Association shall have the right and the power to charge reasonable fees for the use of any recreational facility located within a Common Area and to make reasonable rules and regulations which shall govern the use of the Common Areas and implement the terms of this Declaration as the context requires.

ARTICLE VII USE, OCCUPANCY AND CONDUCT RESTRICTIONS

7.01. Purpose. This Declaration is designed to insure the most appropriate development and improvement of the Property and each Lot therein, to protect the Owners of Lots against uses tending to depreciate or lower the value of the Property or any portion thereon; to prevent the erection of poorly designed or proportioned Improvements in the Property; to insure that all Improvements are built with proper and suitable materials; to encourage and insure the erection of attractive Residential Dwellings, maintain proper building setback from streets and adequate free spaces between Improvements; and generally to provide a high quality residential development on the Property.

7.02. Use of the Property; Compliance with Plat. No Improvement shall be erected, altered, placed or permitted to remain on any Building Site other than a Residential Dwelling designed for private use and occupancy, along with a private garage and other Improvements incidental to single-family residential use upon Lots zoned R-1. No portion of the Property shall be used for other than residential use except sales and development activities by Developer and its successors, assigns, agents, employees, representatives and contractors. Each Improvement shall comply with the minimum front, back and side setback requirements and all other requirement shown on the recorded plat of the Property, or as otherwise specified by Developer and shall comply with the requirements of any applicable law, code, ordinance, rule or regulation.

7.03. Minimum Size of Dwellings. Each Residential Dwelling constructed upon a Building Site shall conform to the minimum square footage requirements, as are determined from time to time by the Developer and/or Architectural Control. These requirements shall be exclusive of garages, open porches, eaves, steps, and basements, except as otherwise approved by Developer.

7.04. Garage. Each Residential Dwelling shall include an attached garage suitable for two or more automobiles.

7.05. Building Sites. No Lot shall be divided into more than one Building Site, but two or more contiguous full Lots or at least one full Lot along with a

contiguous fractional Lot may be used as one Building Site for one Residential Dwelling. No Lot shall be split, divided, subdivided for sale, resale, gift, transfer or otherwise, except by Developer or with Developer's prior written approval and all necessary governmental approval.

7.06. Landscaping. Upon completion of a Residential Dwelling on a Lot or as soon as practicable and appropriate thereafter, Owner shall;

(a) plant or sod a grass lawn on the entire Building Site excluding the areas on which approved Improvements are constructed; and

(b) plant a minimum of two (2) trees with a minimum caliper of two (2) inches at the time of planting, with at least one (1) of the trees planted on the street side of the Lot; and plant at least ten (10) perennial shrubs or bushes provided, however, no hedge, shrub, mass planting or tree shall be allowed to obstruct site lines at any corner.

7.07. Drainage. Upon completion of any Residential Dwelling or other Improvement on a Lot, Owner 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 of Derby and/or Sedgwick County.

7.08. Maintenance. Each Owner (other than Developer who shall only have the obligation to mow unsold Lots owned by Developer) shall keep and maintain all Lots and all Improvements therein or thereon, in good order and repair including, by way of illustration and not by way of limitation, the seeding/sodding, watering and mowing of all lawns, the pruning and cutting of all trees, shrubbery and plantings, and the painting (or other appropriate external care) of all Improvements, all in a manner and with such frequency as is consistent with good property management in relation to the high quality residential neighborhood to be developed on the Property. Trees, shrubs and other plantings that die shall be promptly removed from the Lot by Owner. No tree shall be removed from any Lot without the prior written consent of the Developer or the Architectural Control Committee. Each Owner (other than Developer) shall landscape and maintain the public easements and rights-of-way abutting said Owner's Lot. Public easements and rights-of-way shall be landscaped with grass and trees only unless alternative landscape methods or materials are specifically approved by the Developer or the Architectural Control Committee.

7.09. Excavations. No excavations, except such as are necessary for the construction of a Residential Dwelling or Improvements, shall be permitted on any Lot without the prior written consent of Developer or the Architectural Control Committee.

7.10. Prohibited Improvements and Uses. No trailer, trailer house, mobile home, modular home, used home, secondhand home or previously constructed

building or outbuilding may be moved, placed, parked or used, upon the Property nor permitted to remain upon the Property. No garage, tent, shack, temporary structure, outbuilding or other Improvement, except a Residential Dwelling, may be used at any time for human habitation nor converted into apartments, rental or living quarters. No external antennas, satellite dishes (except digital satellite system discs not to exceed 30 inches in diameter which are permitted), permanent clothes lines, poles, towers or wires shall be erected or maintained on the Property. All utility and phone lines shall be underground.

7.11. Trash; Storage. No trash, ashes, dirt, sand, rock, brick, lumber or other construction material, landscape trimmings, vehicle parts, household furniture, equipment, appliances or recycling materials or other refuse shall be thrown, dumped or maintained on any Lot or Building Site or Common Area in the Property. All trash containers shall be stored out of sight except on days when trash pick up is scheduled. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence or as appropriate to and during construction of Improvements on the Property in accordance with this Declaration.

7.12. Animals. No livestock, chickens, fowl, insects, reptiles or other animal except the usual and ordinary number of family pets may be kept or maintained on the Property and no commercial enterprise, including but not limited to breeding, boarding, training or care, involving the use of birds, animals, reptiles or insects may be conducted on the Property. The Association may, from time to time, publish and impose reasonable regulations regarding the type and number of animals that may be kept on the Property and the control of animal noise and odor. All animals shall be confined at all times within the Residential Dwelling or a fence or enclosure approved by the Architectural Control Committee unless such animal is upon a leash or other appropriate restraint and in the presence and control of the Owner.

7.13. Signs. Other than temporary signs conforming to applicable laws and ordinances such as the sale of a Lot or advertising a garage or estate sale, or home security signs, no sign, advertisement, billboard or other advertising device of any nature may be erected, placed or maintained on any Lot in the Property without Developer's or the Architectural Control Committee's prior written consent; provided, however, Developer or its representatives, agents, employees and contractors may erect signs advertising Lots and Residential Dwellings in the Property for sale and promoting the Property during the development thereof.

7.14. Model Homes and Real Estate Offices. Notwithstanding any other provision herein to the contrary, any Lot, Building Site or Residential Dwelling owned by Developer or others so authorized by Developer may be used for a model home or for a real estate sales office.

7.15. Home Professions and Businesses. No retail, wholesale, manufacturing or repair business shall be conducted or permitted on any Lot or in

any Residential Dwelling or Improvement erected thereon except as authorized in Section 7.14.

7.16. Approved Builder. All Residential Dwellings and Improvements requiring permits from the City of Derby or other government authority constructed upon a Lot or Building Site shall be constructed by an Approved Builder with prior approval of plans therefore by Developer.

7.17. Vehicles. No automobile, truck, motorcycle, boat, trailer of any type, camper, recreational vehicle, cargo van or any other vehicle of any type or description ("Vehicle") may be stored or permanently, continually or regularly parked in or on any street or in the open on any Lot or driveway; provided, however, boats (other than pontoon boats which are specifically excluded) may be continually or regularly parked in an area enclosed by a fence of at least six (6) feet in height and constructed in accordance with the requirements of this Declaration. Vehicle repairs other than ordinary light maintenance are not permitted in the open on any Lot. For purposes of this paragraph 7.17 "stored, or permanently, continually or regularly parked" shall mean parking or storing a Vehicle on a Lot or street for more than forty-eight (48) continuous hours, or a consistent, cumulative presence of a Vehicle contrary to the intent of this restriction.

7.18. 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 portion of the Property shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth, nor shall any other Improvement or activity relating thereto be permitted or allowed to remain in or on any portion of the Property.

7.19. Fencing-General. No chain link or wire fences shall be permitted on the Property, except for use specifically for a dog run or kennel which shall be located in the rear yard and in the area enclosed by a fence which conceals such dog run or kennel from the view of all other Lots and which shall be constructed, placed and maintained in accordance with this Declaration, including approval by the Architectural Control Committee. All other fences and fencing shall be approved by the Architectural Control Committee prior to installation on all Lots.

Any fence erected or maintained on any part of the Property (other than wrought iron fences on Lakeside Lots) shall be constructed, placed and maintained in accordance with this Declaration, including any rules, regulations and requirements established from time to time and at any time by the Architectural Control Committee, and: shall be no less than six (6) feet nor more than six and one-half (6-1/2) feet in height above ground level along its entire length; shall provided for adequate drainage under such fence along its entire length; and shall be constructed such that the rails and stringers shall be concealed by the pickets when viewing the fence from any other Lot, commonly

known as a "good neighbor" fence. In addition to the above restrictions, but in lieu of being deemed Lakeside Lots, the following Lots shall be required to meet the Lakeside Lot fencing restrictions set forth in Section 7.20

7.20. Fencing-Lakeside Lots. Notwithstanding any other provisions herein to the contrary, only wrought iron fencing shall be allowed on any Lakeside Lot. Any dog run, kennel or like facility on a Lakeside Lot shall be constructed only of wrought iron. Wrought iron fencing, dog runs and the like shall be approved by the Architectural Control Committee prior to installation.

7.21. Roof Construction. Roofs shall be constructed with composition shingles, weathered wood or similar in color.

7.22. Storage Buildings. All storage buildings shall be constructed of a siding and roofing material similar in composition and quality to the siding and roofing material used on the Residential Dwelling on the Lot. No plastic, metal, or concrete block storage buildings shall be erected or placed on any Lot unless approved by the Architectural Control Committee prior to installation.

7.23. Use of Lakes. No motorized craft of any type shall be used or maintained on the lakes in the Property. Use of the lakes shall otherwise be controlled by rules and regulations adopted from time to time and at any time by the Developer or the Board of Directors of the Association.

7.24. Exterior Color Schemes. All initial exterior color schemes and all changes to existing color schemes shall be approved in advance by the Developer and/or the Architectural Control Committee. Pre-approved exterior colors and color schemes may be established from time to time and at any time by Developer and may be maintained at Developer's office. All changes to exterior colors and color schemes must be authorized and approved by the Developer or the Architectural Control Committee in accordance with the terms and provisions of Article XI.

7.25. Nuisances; Noxious or Dangerous and Offensive Activities Prohibited. Each Owner, occupant and their agents, guests and licensees shall obey and comply with all applicable laws, ordinances, rules and regulations now in effect or hereafter enacted and all terms and provisions now or hereafter established by this Declaration. No Owner or occupant shall do or allow to be done any act which causes or threatens to cause any damage or encroachment to the Residential Dwelling or Lot of any Owner or the Developer. No noxious, dangerous or offensive activity or thing shall be carried on or permitted on the Property.

7.26. Short Term Rental Restriction. Except as otherwise authorized by a waiver granted by Developer or the Board of Directors as specifically enumerated herein, no owner of a Lot shall rent or lease such Lot for short term rentals such as "Airbnb" or "Vrbo" or similar commercially available short term or vacation rental programs. The Developer or the Board of Directors may grant a waiver of this restriction for any hardship situation that may require temporary leasing such as a

call to military service, a temporary job transfer, or a family illness that forces an owner to move for a limited period of time. Any waiver granted under this provision must be in writing, signed by Developer or the Board of Directors, and shall expire within one (1) year of being granted unless otherwise extended in writing by Developer or the Board of Directors.

7.27. Solar Panels. Solar panels shall only be installed on the rear portion of the roof of the residence, not visible from the front of the residence, and no solar panel shall be installed without prior Architectural Control Committee approval per Article XI.

7.28. Restrictions Not Exclusive. The covenants, conditions, easements and restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by applicable zoning laws, or the laws, rules or restrictions imposed by any deed or the recorded plat of the Property. In the event of any conflict, the most restrictive provision of any such law, rule, regulation, deed, plat or this Declaration shall be taken to govern and control.

ARTICLE VIII THE ASSOCIATION

8.01. Powers and Duties.

(a) The Association shall have the rights and powers as set forth herein and in its Articles of Incorporation and Bylaws, together with its general powers as a nonprofit association or corporation, administered by the Board of Directors, and it shall perform each and every duty required of it by this Declaration.

(b) The Association shall own, maintain, improve, landscape, mow and keep clean the Common Areas.

(c) The Association may maintain such insurance on the Common Areas and all Improvements thereon as deemed necessary and advisable by the Board of Directors.

(d) The Association, through its Board of Directors, 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.

(e) The Association, through its Board of Directors, 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.

(f) The Association, through its Board of Directors, shall have the right to create an Architectural Control Committee which shall have at least three (3) and no more than five (5) members. The Board of Directors may delegate to the Architectural Control Committee such duties as the Board of Directors sees fit so long as those duties are in keeping with the role of architectural control.

8.02. Operations and Expenses. The Association, through its Board of Directors, shall establish such committees as it deems appropriate or advisable may engage a manager, management company, secretaries, engineers, auditors, accountants, legal counsel, and other employees, independent contractors, agents 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 charges for management companies, independent contractors, agents 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 duties hereunder.

8.03. Developer's Rights. The terms and provisions of this Article shall be subject and subordinate to the rights of Developer as set forth in Article III of this Declaration.

ARTICLE IX METHOD OF PROVIDING GENERAL AND SPECIAL FUNDS

9.01. For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the Improvements and render the services herein provided for, each Lot within the Property owned by a Class A Member shall be subject to an annual general fund assessment which may be levied by the Association from year to year, which assessment shall be paid to the Association annually or at such other times as the Association may determine in advance. Anything to the contrary herein notwithstanding, Developer, its successors or assigns in their sole discretion, shall fix the amount of annual assessments for the Association, for so long as Developer, its successors or assigns own at least one (1) Lot in the Property (including land added to the Property). Thereafter, the Association, through its Board of Directors, shall from year to year fix and determine the total amount required in its general fund and may levy and collect an annual assessment for each Lot owned by a Class A Member. Assessments shall commence upon acceptance of title to a Lot. The assessment for the year in which the title is transferred shall be determined on the basis of date of closing and prorated on a 365-day year basis.

9.02. The annual assessments upon each Lot may be increased by the Association, through its Board of Directors, on all Lots by either:

(a) an amount not exceeding fifty percent (50%) of the previous year's annual assessment at the reasonable discretion of the Board of Directors; or

(b) an amount in excess of fifty percent (50%) of the previous year's annual assessment, provided that at a meeting of the Members, seventy-five percent (75%) of the votes of the Class A members present in person or by proxy at such meeting or by written assent, authorize such increase by an affirmative vote.

9.03. The Association, through its Board of Directors, shall be empowered to levy and collect special assessments for capital improvements or repairs in such amounts as the Board of Directors deems reasonably necessary.

9.04. Unless the increases provided for in paragraph 9.02 of this Article IX are specifically limited by the resolutions in which they are contained to be for a specified period, they shall continue to be effective until rescinded by the Association, at a meeting specifically called for such purpose, by an affirmative vote of seventy-five percent (75%) of the Members present in person or by proxy, or by written assent, or by action taken under the terms of paragraph 9.06 of this Article IX and in either such event the rescission shall be effective commencing on the first day of the next succeeding year.

9.05. Whenever the Board of Directors may deem it advisable, at a meeting of the Members, to submit a proposal under paragraph 9.02 (b) of this Article IX to vote upon an increase in the assessment in excess of fifty percent (50%) of the previous year's annual assessment, notice of such meeting shall be deposited in the United States mail not less than ten (10) days prior to the date of such meeting.

9.06. The assessments hereunder shall be due and payable on January 1st of each year unless otherwise determined by the Association. Upon levying of each assessment, the Association shall notify all Owners of assessable Lots who are Class A Members of the Association of the amount of such assessment. Failure to levy the assessment prior to January 1st of each year for the next succeeding fiscal year beginning of January 1st or delay in notice of the assessment shall not invalidate any such assessment subsequently made for that particular year; nor shall failure to levy an assessment for any one year affect the right to do so for any subsequent year. When the assessment is levied subsequent to the 1st day of December which precedes such fiscal year then such assessment shall become due and payable not later than thirty (30) days from the date of levying the assessment. The Developer shall, for the purpose of carrying out the terms of this Declaration, have the right to make a partial assessment within the limits herein provided for and on a prorated basis. The Association may elect to permit collections in monthly, quarterly or semi-annual payments in lieu of the annual payments provided for herein.

9.07. A written or printed notice, deposited in the United States Post Office, with postage prepaid thereon, and addressed to the respective Members at the last address listed with the Association, shall be deemed to be sufficient and proper notice for these purposes or for any other purpose of this Declaration where notices are required, unless otherwise provided herein.

9.08. The Owner of each Lot subject to an annual assessment or special assessments as herein provided shall, by acceptance of a deed to such Lot, be taken to have agreed and does by these presents agree to pay to the Association all assessments placed against such Lot in accordance herewith and the Association is hereby granted the power to proceed against such Owner personally for the collection of said assessments, expenses and attorney fees, said right to be in addition to and not to be construed as a limitation upon remedies and rights of the Association otherwise herein granted.

9.09. The Owner of each Lot within the Property is hereby advised that the City of Derby, Sedgwick County, Kansas, has established certain special assessments against Lots within the Property ("Specials") which are in addition to, not in lieu of, any assessment or special assessment provided for within this Article IX and each Owner is liable for payment of said Specials levied against its Lot to the City of Derby, Sedgwick County, Kansas.

9.10. The Owner of each Lot within the Property is hereby advised that Lots within the Property are included within the district responsibilities of Rural Water District #3, Sedgwick County.

9.11. The Association shall be empowered to levy and collect an initiation fee in an amount not greater than the then current annual assessment from each purchaser of a Lot, due upon conveyance of the Lot out of the proceeds of the closing of the conveyance. Such fee shall be defined as an assessment pursuant to K.S.A. Chapter 58, Section 58-3821(a)(2)(G), payable to the Association and not to the Declarant and as such, shall not be subject to the prohibition against "transfer fees" set forth in subsection (b) therein.

ARTICLE X LIEN ON REAL ESTATE

10.01. The assessments provided for herein shall become a lien on the Lot against which they can be levied as soon as payable as above set forth provided, however, that such liens shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said Lot. In the event of the failure of any Owner to pay assessments within thirty (30) days from the date same are levied, then such assessments, from the thirtieth (30th) day after levy shall bear interest at the maximum rate of interest then allowed in Kansas on judgments.

10.02. Within thirty (30) days from the date of levying the assessments for the calendar year during which and for which the assessments are levied, the assessments shall become delinquent and payment of both principal and interest may be enforced as a lien on said real estate and may be foreclosed in proceedings in any court in Sedgwick County, Kansas, having jurisdiction of suits for the enforcement of such liens. The Association may in its discretion file certificates of nonpayment of assessments in the office on the Register of Deeds whenever any such assessments are delinquent. For each certificate so filed the Association shall be entitled to collect from the Owner or Owners of the property described therein a fee of the greater of One Hundred Fifty Dollars (\$150.00) or one year's annual assessment as described in Article IX above, which fee is hereby declared to be a lien upon the Lot so described in said certificate, provided that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate. Such fee shall be collectable in the same manner as the original assessments provided for herein and in addition to the interest and principal due thereon.

10.03. Such liens shall continue for a period of five (5) years from the date of delinquency or the maximum time allowed by law, whichever is longer, unless within such time suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing same.

ARTICLE XI ARCHITECTURAL CONTROL

11.01. Architectural Control Function. In order to assure the development and continued maintenance and operation of the Property as a first-class residential neighborhood, no Improvement shall be commenced, erected, placed, maintained, moved onto or permitted to remain on any Lot, nor shall any existing Improvement upon any Lot be changed or altered in any manner, including but not limited to exterior colors or materials, nor shall any new use be commenced on any Lot, unless plans and specifications (including a site plan and a grade plan and drainage plan) therefore shall have been submitted to and approved in writing by Developer, who shall have complete control of all such matters and may approve or withhold approval on any basis deemed proper in Developer's sole and absolute discretion. Once Developer has relinquished its interest in the Property to the Association, the Architectural Control Committee of the Association shall succeed to these duties.

11.02. Required Information. Such plans, specifications, site plan, grade plan, and drainage plan shall be in such form and shall contain such information as may be required by Developer in Developer's sole discretion. Developer shall have the absolute right at any time and from time to time to delegate such architectural control function to any other person(s) or entity(ies).

11.03. No Liability. Neither Developer, nor any successor, assign, agent, employee, representative or other person or entity to whom such architectural control function has been delegated by Developer nor the Association, its Board of Directors or Architectural Control Committee, shall be liable to any Owner or other person or other entity for any claims, damages or causes of action arising from or in any way out of performance or nonperformance of the architectural control function including, by way of illustration and not limitation, the failure, refusal or neglect to approve any plans and specification submitted. Any architectural control decision shall be final and conclusive.

11.04. Noncompliance. If any Improvement shall be altered, erected, placed or maintained upon any Lot, or any use or new use commenced or maintained on any Lot, without architectural control approval or otherwise than in accordance with the plans and specification approved pursuant to the provisions of this Article, such alteration, erection, maintenance, use or new use shall be deemed to have been undertaken in violation of this Declaration and without the approval required herein, and upon written notice, any such Improvements so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or re-altered, and any such use or new use shall be terminated so as to extinguish such violation. If fifteen (15) days after the notice of such violation the Owner of the Lot upon which such violation(s) exist shall not have taken reasonable steps toward the removal or termination of the same, Developer, the Association or any other Owner shall have the right to take such steps as may be necessary to extinguish such violation by proceedings in any court in Sedgwick County, Kansas having jurisdiction over such matters and Owner of the Lot upon which such violation(s) exist shall be liable for all expenses for such proceedings including attorney fees.

ARTICLE XII ENFORCEMENT

12.01. Right to Enforce. Developer, the Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, easements and restrictions now or hereafter imposed by the provisions of this Declaration including the authority to commence and maintain an action to enjoin any breach or threatened breach of any of the provisions hereof, and to pay all costs, subject to reimbursement, of any such action or other enforcement procedure. Developer, its successors or assigns in their sole discretion, shall determine compliance with this Declaration, for so long as Developer, its successors or assigns own at least one (1) Lot in the Property (including land added to the Property), and in the event a Lot is not in compliance within fifteen (15) days of notice of non-compliance to the Owner of such Lot, said Owner shall pay Damages in accordance with Section 12.05 below.

12.02. Waiver. Failure by Developer, the Association, or any Owner to enforce any covenant, condition, easement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.03. Attorneys' Fees and Costs. The Developer, the Association, or any Owner shall have the right to receive from the Owner of a Lot not in compliance with this Declaration, a reasonable sum for attorney's fees and all other expenses reasonably incurred in enforcing the rights, terms, provisions, covenants, conditions, easements and restrictions hereunder.

12.04. Notice of non-compliance and hearing. Once Developer has relinquished its interest in the Property to the Association, the Board of Directors of the Association shall have the authority to determine compliance with this Declaration. Upon receipt of an allegation of a Lot's non-compliance under Article VII, USE, OCCUPANCY AND CONDUCT RESTRICTIONS, (excluding Sections 7.11, 7.12 and 7.13) the Board of Directors shall review the allegation and determine if action is necessary. If the Board of Directors determines that action is necessary, the Owner of the Lot shall be notified in writing of the allegation and the Owner shall have fifteen (15) days to request and receive a hearing with the Board of Directors to dispute the allegation. If the Owner fails to respond to the notification, or after a hearing, the Board of Directors determines the Owner's dispute of the allegation is without merit, the Board of Directors shall notify the Owner in writing of the Board of Directors' determination of non-compliance. If the allegation of non-compliance is under Sections 7.11, 7.12 or 7.13, no hearing shall be available, it being in the Board of Directors' sole discretion to determine non-compliance based on the Board of Directors' independent review, and the Board of Directors shall notify the Owner in writing if the Board of Directors determines the Lot is not in compliance with the Declaration. Owner shall have fifteen (15) days from the date of the notice of non-compliance to bring the Lot into compliance, determination of compliance to be in the Board of Directors' sole discretion.

12.05. Damages for breach of Declaration. In the event the Lot is not in compliance within fifteen (15) days of the notice of non-compliance, the Owner shall pay the Association an amount equal to \$50 multiplied by the number of days of non-compliance from the date of the notice of non-compliance, not to exceed \$500 per month of non-compliance, not as a penalty but as liquidated damages for the Owner's breach of the Declaration. Such amount due shall become a lien on the Lot as soon as it is due and payable; provided, however, such lien shall be inferior or subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on the Lot. In the event of Owner's failure to pay the amount due within thirty (30) days from the date levied, then such amount due, from the thirtieth (30th) day after levy shall bear interest at the maximum rate of interest then allowed in Kansas on judgments. The liquidated damages provisions of this Section 12.05 shall be in addition to, not in lieu of, the right of Developer, the Board of Directors, the Association or any Owner to enforce, by any proceeding at law or in equity, all covenants, conditions, easements and restrictions per Section 12.01 of this Declaration.

**ARTICLE XIII
RIGHTS AND POWERS OF DEVELOPER**

13.01. Assignment and Delegation. Developer shall have all rights and powers granted to the Association, its Board of Directors or the Architectural Control Committee for so long as Developer, its successors or assigns own at least one (1) Lot in the Property, and shall have the absolute right and power to assign and/or delegate, at any time and from time to time, all or any part of any of the rights, powers and authority contained in this Declaration.

13.02. Addition of Other Land. Developer, at its discretion, shall have the right from time to time to add additional land to the Property including but not limited to, the right to plat additional land which may include patio homes, provided that:

(a) Developer owns a Lot or Lots in the Property; and

(b) The land so added to the Property shall at the time of addition be subject to and bound by all of the terms of this Declaration and any amendments thereto.

13.03. Removal of Land. Developer shall have the absolute right at any time and from time to time to waive or modify any or all of the covenants, conditions, easements and restrictions of this Declaration as to any undeveloped Lot owned by Developer by executing and filing a document of record with the office of the Register of Deeds of Sedgwick County, Kansas describing such waiver or modification and describing the Lot to which such waiver or modification applies.

13.04. Development Activities. Developer specifically reserves the right to carry on Developer's business in the Property so long as Developer owns land in the Property or new Residential Dwellings or Improvements are being constructed in the Property, including by way of illustration and not limitation, maintaining sales offices, model homes, business offices and other facilities necessary or convenient for the business of Developer.

13.05. Easements in Favor of Developer. Developer specifically reserves to itself, its successors and assigns, a perpetual, nonexclusive easement and right-of-way over the Common Areas for the purposes of constructing, maintaining, repairing, replacing and rebuilding pipes, drains, mains and/or utilities for the purpose of conveying gas, water and sewage through the Property, together with the right to excavate and level ditches and/or trenches for the location of such pipes, drains, mains and utilities.

**ARTICLE XIV
COVENANTS RUNNING WITH THE LAND**

14.01. The covenants, conditions, easements and restrictions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all Owners of any part or portion thereof, along with all successors, assigns, grantees or purchasers of any part or portion of the Property, including under any deed, grant, escrow, contract of sale, device, or lease.

**ARTICLE XV
AMENDMENT**

15.01. Amendment by Developer. Until such time as Developer owns no Lot in the Property, Developer shall have the absolute right to amend this Declaration by recording a written Amendment in the office of the Register of Deeds of Sedgwick County, Kansas; provided, however, that no such Amendment shall materially affect any rights of the then existing mortgage holders.

15.02. Other Amendment. After Developer owns no Lot in the Property, this Declaration may be amended only upon the affirmative vote of seventy-five percent (75%) of the votes of Class A Members of the Association, in person or by proxy at a meeting called for such purpose, or by written assent, evidenced by an Amendment to the Declaration duly executed and acknowledged by the President of the Board of Directors and recorded in the office of the Register of Deeds of Sedgwick County, Kansas; provided, however, that the Developer retains the right to amend this Declaration, in its sole discretion as it may relate to any land added pursuant to the provisions hereof.

**ARTICLE XVI
MISCELLANEOUS**

16.01. Term. The covenants, conditions, easements and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Developer, the Association, or the Owner of any Lot and their respective legal representatives, heirs, successors, assigns and grantees, for a term of thirty-five (35) years from the date of recording hereof, after which time the covenants, conditions, easements and restrictions hereof shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the Owners of a majority of the Lots by number according to the recorded plat and any amendments thereto, has been recorded, agreeing to abolish or change these covenants, conditions, easements and restrictions in whole or in part.

16.02. Severability. All of the easements, restrictions, conditions and covenants contained in this Declaration shall be construed together, but if it shall at any time be held that any one or more of such easements, restrictions, conditions or covenants, or any part thereof, is invalid or for any reason becomes

unenforceable, no other easement, restriction, condition, covenant, reservation or any part thereof, shall be affected or impaired.

16.03. Construction and Interpretation. In constructing, 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 Lot or Building Site or upon the construction of buildings or Improvements, 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.

16.04. Waiver and Exceptions. The failure by Developer, the Association, or of any Owner to enforce any of the easements, restrictions, conditions, covenants or reservations 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 or reservation.

16.05. Mortgage Protection Clause. No breach of the covenants, conditions, easements or restrictions herein contained nor the enforcement of any 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, easements and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure sale, or deed in lieu thereof.

The undersigned consents to encumber Lots owned by it to the Declaration.

Don Klausmeyer Construction, L.L.C.

By: Don Klausmeyer
Don Klausmeyer, Member

STATE OF KANSAS)
) ss:
SEDGEWICK COUNTY)

BE IT REMEMBERED that on this 19th day of April 2024 before me the undersigned, a Notary Public in and for the County and state aforesaid, came Don Klausmeyer, on behalf of Don Klausmeyer Construction, L.L.C. as its Member who is personally known to me to be the same person who executed the within instrument of writing, 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 affixed my official seal at Wichita, Kansas, on the day, month and year first above written.

Breanna Horst
Notary Public

My Appointment Expires: 08-31-2026



The undersigned consents to encumber Lots owned by it to the Declaration.


Comfort Homes, Inc.

By: 
Richard A. Niedens, President

STATE OF KANSAS)
) ss:
SEDGEWICK COUNTY)

BE IT REMEMBERED that on this 7th day of May 2024 before me the undersigned, a Notary Public in and for the County and state aforesaid, came Richard A. Niedens, on behalf of Comfort Homes, Inc. as its President who is personally known to me to be the same person who executed the within instrument of writing, 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 affixed my official seal at Wichita, Kansas, on the day, month and year first above written.


Notary Public

My Appointment Expires:





Sedgwick County
Register of Deeds - Tonya Buckingham
Doc.#/Flm-Pg: 30163728

Receipt #: 2314171
Pages Recorded: 3

Recording Fee: \$55.00

Cashier: kmilliga

Authorized By: *Tonya Buckingham*

Date Recorded: 05/16/2022 01:33:13 PM



RESTRICTIVE COVENANT

THIS DECLARATION is made this 12th day of April, 2022, by Kick "N" Development Corp, a Kansas corporation, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

FOXFIRE ADDITION

Lots 1 through 42, Block A
Lots 1 through 15, Block B
Lots 1 through 27, Block C
Lots 1 through 8, Block D
Lots 1 through 14, Block E
Lots 1 through 31, Block F

WHEREAS, the Declarant is desirous in that provisions pertaining to maintenance of and responsibility for Reserves "A", "B", "C", "D", "E", "F", "G", "H", "I", "J" and "K", FOXFIRE ADDITION, Derby, Sedgwick County, Kansas, be placed of record;

NOW, THEREFORE, Declarant hereby declares and covenants:

1. Reserves "A" and "B" are reserved for open space, landscaping, drainage purposes, private screening walls and/or fences, entry monuments, berms, and utilities as confined to easement.

Reserve "C" is reserved for open space, landscaping, drainage purposes, a clubhouse, swimming pools and related appurtenances, playgrounds, and utilities as confined to easement.

Reserve "D" is reserved for open space, landscaping, drainage purposes, private screening walls and/or fences, entry monuments, berms and utilities as confined to easement.

Reserves "E", "G", and "I" are reserved for open space, landscaping, drainage purposes, lakes, and utilities as confined to easements.

Reserves "F", "H", and "K" are reserved for open space, landscaping, drainage purposes, contingent street dedication, and utilities as confined to easement.

Reserve "J" is reserved for open space, landscaping, drainage purposes, public sidewalk, and utilities as confined to easement.

2. Reserves "A", "B", "C", "D", "E", "F", "G", "H", "I", "J" and "K" (collectively the "Reserves"), shall be owned and maintained by Declarant until such time as a Homeowner's Association for the addition has been established pursuant to section 4 hereof. Declarant covenants to continuously maintain to the satisfaction of the City all drainage structures and improvements located in the Reserves, whether constructed by the City or pursuant to City subdivision regulations, until such Homeowner's Association has been so established. Upon establishment of such Homeowner's Association, it shall succeed to such maintenance obligations and shall continuously maintain such reserves to the satisfaction of the City.

3. In the event that the homeowners association fails to maintain any or all of the aforementioned Reserves in a manner deemed satisfactory to the City of Derby, Kansas, said City of Derby, Kansas may exercise the right to enter said Reserves, perform the necessary maintenance, and assess the costs incurred to the homeowners association or to divide and assess said costs equally among all lots in the addition, including any lots in a replatted portion of the addition, as stipulated in the restrictive covenants and Developer's Agreement documents for said addition.

4. Declarant shall organize and incorporate a Homeowner's Association as a non-profit corporation under Kansas law, all at the Declarant's sole cost. The Reserves shall be deeded to the Homeowner's Association not more than 30 days after its incorporation.

5. The articles of incorporation, declaration of covenants, or other organizational instruments of the Homeowner's Association shall expressly provide that such Homeowner's Association, or any similar organization organized in conjunction with subsequent phases of development of all or any portion of property included within FOXFIRE ADDITION, shall be responsible for maintenance of the Reserves and all common areas contiguous thereto, to the same extent as provided herein or in the applicable developer's agreement or the plat of FOXFIRE ADDITION.

6. Declarant hereby grants an irrevocable easement to the CITY OF DERBY, KANSAS ("City"), to enter upon the Reserves or any of them for the purposes of maintaining any drainage improvement located thereon. Entry upon any such reserve shall be subject to the following conditions precedent:

A. The Declarant or Homeowners Association, as the case may be, has failed to maintain such drainage improvement as required by this covenant; and

B. The City has given written notice of required corrective action to the Declarant or the Homeowners Association, as the case may be, and such entity has failed or refused to initiate such corrective action within ten (10) days after such notice.

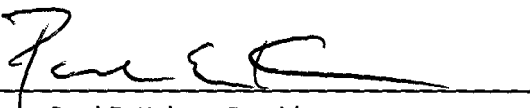
If the City performs corrective action pursuant to this covenant, the Declarant or Homeowners Association, as the case may be, shall promptly pay to the City its cost therefor together with a reasonable administrative fee. Such charge, if not paid within ten (10) days submission of an invoice therefor, shall be divided equally among all lots within FOXFIRE ADDITION, including any replat of any portion thereof, and such *pro rata* share shall constitute a lien upon each Lot and may, at the City's option, be levied by ordinance as a special assessment against each such Lot.

7. The covenants, conditions, and restrictions on the Reserves created and established by this instrument may be not waived, amended, terminated without the express written consent of the City and no such waiver, amendment or termination shall be effective until the written consent of the City has been recorded in the office of the Register of Deeds of Sedgwick County, Kansas.

8. This covenant shall be binding on Declarant and its heirs, successors and assigns, is a covenant running with the land, and is binding on all successors in title or interest to all Lots as platted in said FOXFIRE ADDITION, Derby, Sedgwick County, Kansas.

EXECUTED the day and year first above written.

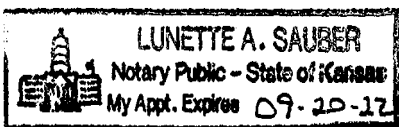
KICK "N" DEVELOPMENT CORP

By: 
Paul E. Kelsey, President

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on the 12th day of April, 2022, before me, the undersigned, a Notary Public, came Paul E. Kelsey, as President of Kick "N" Development Corp, a Kansas corporation, to me known to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf and as the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal, the day and year last above written.




Notary Public

My Commission Expires: 09-20-2022



Sedgwick County
Register of Deeds - Bill Meek
DOC.#/FLM-PG: 29027802

Receipt #: 1706344
Pages Recorded: 5
Cashier Initials: AL

Recording Fee: \$24.00
Authorized By:

Date Recorded: 12/24/2008 12:37:37 PM



DECLARATION OF PROTECTIVE COVENANTS

DERBY CORPORATE PARK

DERBY, SEDGWICK COUNTY, KANSAS

This Declaration of Protective Covenants ("Covenants") is made and executed this 23rd day of December, 2008 (the "Effective Date"), by Derby Corporate Park, LLC, a Kansas limited liability company (hereafter "Declarant").

SECTION 1. RECITALS

1.1 Declarant is the owner of the following described real property, commonly known as "Derby Corporate Park", and legally described as follows:

Lots 1 through 16, Block A, Lots 1 through 9, Block B, Lots 1 through 15, Block C, Reserves A, B, C, and D, Derby Corporate Park, Derby, Sedgwick County, Kansas, (hereafter the "Property").



1.2 Declarant desires to insure the Property is developed in an aesthetically controlled environment, with appropriate limitations on the uses to which the Property can be devoted, so as to protect the value of the Property for the benefit of the present and future owners thereof.

SECTION 2. SUBMISSION

2.1 Declarant hereby subjects the Property to the covenants, conditions, and restrictions set forth herein, which covenants, conditions, and restrictions shall be deemed covenants running with the land, and shall be binding on all parties presently having or hereafter acquiring any right, title, or interest in the Property, or any part or portion thereof, including such parties as tenants, business invitees, franchisees, and licensees.

SECTION 3. DEFINITIONS

3.1 "Building Site" shall mean any platted lot (as platted now or as replatted in the future) located within the Property or any platted lot combined with a portion of a contiguous platted lot, or any two or more contiguous platted lots, or, with the prior written approval of the Committee (hereafter defined), a portion of a platted lot or any contiguous portions of two or more platted lots. To qualify as a Building Site, all lots and/or portions thereof shall be owned under common ownership.

3.2 "Committee" shall mean the Derby Corporate Park Architectural Review Committee (see Section 7.1, below).

5'
24.00
155m

40
C



3.3 “Improvement” shall mean and include any building and/or structure of any type or kind, paved parking and/or loading area, paved walk, paved drive, fence, wall, pole, sign, landscaping, planting, or earthen barrier.

3.4 “Owner” shall mean the party or parties owning fee simple title to any portion of the Property.

SECTION 4. USE RESTRICTIONS

4.1 Permissible Uses. The Property shall be used only for those permitted uses allowed by the City of Derby for the zoning classification(s) assigned to lots that comprise the Property.

4.2 Prohibited Activities. No activity shall be conducted on any part of the Property in connection with a permissible use, which activity is or may become, a nuisance or hazard to any person because of the excessive emission of fumes, odors, gases, radiation, dust, liquid waste, smoke, or noise. Nor shall any activity be conducted which would constitute a violation of any federal, state, or municipal statute, ordinance, or regulation.

SECTION 5. REGULATION OF IMPROVEMENTS

5.1 Construction or Placement of Improvements. No Improvement may be constructed or placed on the Property other than on a Building Site.

5.2 Prior Approval. No Improvement shall be constructed or placed on any Building Site until such time as plans and specifications for such Improvement, together with a site plan showing the location of such Improvement on the particular Building Site, have been submitted to and approved in writing by the Committee. Plans and specifications must include, at a minimum, floor plans and elevations of the proposed Improvement and identification of the construction materials to be used. Additional information may be requested by the Committee within forty-five (45) days of any submission. Failure of the Committee to respond to the submitting party within forty-five (45) days of the final submission of information shall constitute constructive approval from the Committee for the construction or placement of the submitted Improvement, as designed in the submitted materials, on the Property. Any additions to, or modifications of, an existing Improvement shall be subject to the same approval process. (See also paragraph 5.7 for requirements as to prior approval of landscape plan.)

5.3 Approval Criteria. In its decision to accept, deny, or request modification of a proposed Improvement, the Committee may consider some or all of the following: conformity and harmony of external design of the Improvements as compared with other Improvements in the vicinity of the Building Site, and Improvements on the Property as a whole; the location of the Improvements on the Building Site; compliance with all building regulations under this Section; use restrictions set by these Covenants or the City of Derby.

5.4 Setbacks and Other Location Restrictions. No Improvements, except landscaping, shall be erected or placed on any Building Site within the building setbacks, utility easements, or floodway easements established by the plat of Derby Corporate Park, now or as replatted, or within 20 feet of any side boundary line of any Building Site, with the exception of paved walks, paved driveways and paved parking. Notwithstanding the foregoing, a ground level sign identifying the occupant and address of the Building Site may be placed in front set back area of a Building Site as provided in paragraph 5.9 below.

5.5 Density. No more than 80% of the area of a Building Site may be covered by a building, or buildings, without written approval from the Committee.

5.6 Parking, Drives, Walks, and Loading Areas. Off-street parking shall be provided on each Building Site in conformance with the site development regulations of the City of Derby. All off-street parking, drives, walks, and loading areas shall be properly graded, paved, and maintained to assure proper drainage. Sufficient parking and loading areas shall be maintained on each Building Site to adequately serve the business conducted thereon without using adjacent public streets for such purposes. No use shall be made of any Building Site which will require parking in excess of the parking spaces available thereon.

5.7 Landscaping. All Building Sites shall be landscaped and maintained in accordance with a plan submitted to and approved in writing by the Committee. The landscape plan, which must include all plantings, fences, walls, screenings, and accessory structures of any nature, must be approved by the Committee prior to Owners' application to the appropriate governing authority of a building permit to allow construction of Improvements on a Building Site. Landscaping plans will be judged on their efficacy in screening and denying access to dangerous, unsightly, lesser attractive, or potentially bothersome activities of the Owner.

5.8 Utility Connections. All utility connections to an Improvement, including all electrical and telephone connections, shall be underground or, where by necessity aboveground, screened from public view to the satisfaction of the Committee.

5.9 Signage. No signage shall be permitted anywhere on the Property without the Committee having first given its written approval as to appearance and content. One permanent ground level sign identifying the name of the occupant and the address of the Building Site may be placed in the front setback area of the Building Site. Signage may be affixed to any exterior wall of the primary building located on a Building Site. All signage must comply with federal, state and municipal regulations. No portable signage may be maintained anywhere on the Property without permission from the Committee.

5.10 Outside Storage. Any outdoor storage areas, including areas for trash, refuse, recycling, or aggregate material of any nature, must be properly screened from public view to the satisfaction of the Committee. An Owner must submit a full and complete site plan to the Committee for consideration. The Committee may grant a phased approach to screening, fencing, and/or other portions of the Improvement site plan based on progress of development in the area under construction and other factors regarding the submitting Owner's neighbors on the Property.

SECTION 6. MAINTENANCE

6.1 Building Sites and Improvements. Every Owner of a Building Site shall be responsible for maintaining the Building Site in a safe, clean, and orderly condition. All lawns and shrubbery located on a Building Site shall be regularly mowed and trimmed so as to present an attractive environment. All Improvements and landscaping materials on a Building Site shall be maintained in good order, repair and condition, with all exterior painted surfaces of Improvements being regularly maintained in a good condition.

6.2 Drainage Easements. There are certain platted lots within the Property which are encumbered by a drainage easement. The Owner of any Building Site subject to such drainage easement shall keep such easement free from drainage obstructions and will keep the easement properly landscaped and maintained.

6.3 Trash Removal. Every Owner of a Building Site shall be responsible for the prompt and regular removal of all refuse and trash therefrom.

6.4 Tree Maintenance. The Owners of all Building Sites adjoining the northerly boundary line of the Property shall maintain the existing tree row, and replace trees as necessary, to provide screening of the adjacent 55th Street right-of-way. Construction of one or more

2025

entrances through the tree row, allowing direct access to an Owner's lot from 55th Street, may be allowed by the Committee upon application by the Owner.

SECTION 7. ENFORCEMENT

7.1 Enforcement Authority. Declarant will appoint three persons to comprise the Committee. Declarant may also create a Derby Corporate Park Lot Owners Association ("Association") to discharge all obligations imposed on the Committee hereunder and to enforce all duties imposed on Owners of the Property hereunder. All Owners shall be members of the Association. The initial members of the Committee will be appointed by Declarant and will serve at the pleasure of Declarant. Upon the death, resignation, or discharge of any member of the Committee, Declarant shall appoint a successor, unless at such time Declarant has surrendered control of the Committee, as hereafter provided, in which case the Association shall appoint such successor. The act of a majority of the Committee shall be binding, and the majority of the Committee may appoint a representative to act for it hereunder.

7.2 Surrender of Committee Control. At such time as Declarant has divested itself of ownership of more than 90% of the square footage of the Property, control of the Committee shall pass to all Owners of the Property. Declarant may voluntarily relinquish control sooner. Committee appointments shall be made by the Association with each Owner having one vote for each square foot of the Property owned. Voting quorum required at all decision-making meetings shall consist of greater than fifty percent (50%) of the Property area's being represented at a meeting of the Owners, in person or by proxy. The act(s) of the holders of a majority of votes cast at a meeting that achieves voting quorum shall control.

7.3 Enforcement. Any Owner or occupant of a Building Site who is in violation of any of the provisions of this Declaration will have a period of thirty (30) days from the date of written notice from the Committee or Association of such violation within which to begin correction of the same. If the violation is not completely corrected within a reasonable amount of time thereafter, the Committee or Association may correct such violation or may pursue judicial proceedings to require the Owner to correct such violation. Any costs associated with corrective measures undertaken by the Committee or Association will be a personal obligation of the Owner of the Building Site for which the Committee may seek reimbursement via judicial means. All court costs and attorneys fees incurred by the Committee or Association in any successful judicial proceeding against any Owner pursuant to this paragraph may be properly assessed against such Owner.

7.4 Assessments. The Committee shall have authority to levy assessments against the Owners of all Building Sites for the purpose of financing the performance of any obligations imposed on the Committee hereunder, e.g., maintenance of Reserve areas. Such assessments shall not exceed the sum of \$500 per Building Site per annum or up to \$100 per acre, whichever is higher, as adjusted by the consumer price index published by the United States government. Such assessments shall constitute a personal obligation against each of the Owners and shall not constitute an in rem charge against any Building Site.

SECTION 8. MISCELLANEOUS

8.1 Term. These Covenants shall continue in full force and effect for a period of fifteen (15) years from the date of its execution, and for successive periods of ten (10) years each unless modified, amended, or revoked as hereafter provided.

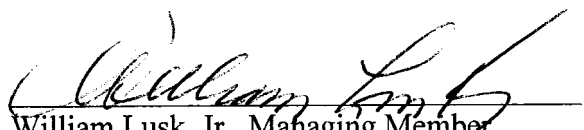
8.2 Modification, Amendment, or Revocation. This Declaration may be modified, amended, or revoked by the Declarant so long as Declarant owns more than fifty percent (50%) of the Property. Upon the expiration of the initial fifteen-year term, and during any ten-year extensions thereof, these Covenants may be modified, amended or revoked by the Owners of more than fifty percent (50%) of the square footage of the Property.

000000

8.3 Reservation of Easement. Declarant reserves right to create easements in the common areas, setbacks, and reserves of Derby Corporate Park, for the limited purpose of erecting and maintaining monument signs identifying the Property as "Derby Corporate Park," and/or a business or businesses of the Property Owners.

8.4 Severability. Invalidation of any one or more of the provisions of these Covenants by court order shall not effect any of the remaining provisions which shall continue in full force and effect.


Executed this 23rd day of December, 2008.


William Lusk, Jr., Managing Member
Derby Corporate Park, LLC

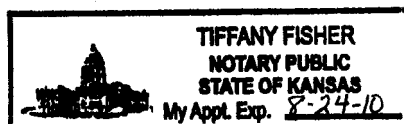
ACKNOWLEDGEMENT

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

This instrument was acknowledged before me on the 23rd day of DECEMBER, 2008, by William Lusk, Jr., Managing Member of Derby Corporate Park, LLC, for an on behalf of said company.


Notary Public

My Appointment Expires: August 24, 2010



Please return to:
DCP
1608 E. Lewis
Wichita, KS 67211



Sedgwick County
Register of Deeds - Bill Meek
DOC.#/FLM-PG: 29011589

Receipt #: 1700195
Pages Recorded: 2
Cashier Initials: DH

Recording Fee: \$12.00
Authorized By:

Date Recorded: 10/3/2008 3:23:55 PM



RESTRICTIVE COVENANT

THIS DECLARATION made this 12th day of August, 2008, by Derby Corporate Park, LLC, a Kansas Limited Liability Company, the "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

DERBY CORPORATE PARK

- Lots 1 through 16, Block A
- Lots 1 through 9, Block B
- Lots 1 through 15, Block C

WHEREAS, the Declarant's property is located near McConnell AFB and is accordingly subject to considerable noise from the operation of aircraft which may infringe upon the enjoyment of said property and may affect the health and/or well being of the property's users, and

WHEREAS, the City of Derby, in connection with approval of the plat of said addition, shall require that proper consideration be given to abate outside noise pollution within buildings constructed on said property:

NOW, THEREFORE, Declarant hereby declares that DERBY CORPORATE PARK, Derby, Sedgwick County, Kansas, shall be and the same is subjected to the following restrictive covenant, to wit:

That any structure constructed on the premises shall be so designed and constructed as to minimize outside noise pollution in compliance with applicable City of Derby and/or Sedgwick County codes and with due consideration given to the intended use of the structure. This covenant is for the benefit of said property and shall run with the land and shall inure to the benefit of and pass with said property and shall be binding upon the successors and assigns, jointly and severally, by these presents.

Please return to:
Karen Morgan
CITY OF DERBY
611 Mulberry
DERBY, KS 67037-3533
(316) 788-6632

2/12

Restrictive Covenant
Page 2 of 2

Executed the date and year first above written.

Derby Corporate Park, LLC

By: William Lusk, Jr. Living Trust dated
May 26, 1994, Member

By: Lusk Holdings, L.C., Member

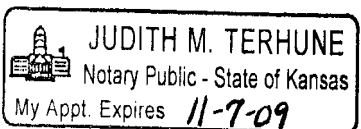
By: *William Lusk, Jr.*
William Lusk, Jr., Trustee

By: *W. E. Lusk, Jr.*
W. E. Lusk, Jr., Managing Member

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on the 12th day of August, 2008, before me, the undersigned, a Notary Public, came William Lusk, Jr., Trustee of the William Lusk, Jr. Living Trust dated May 26, 1994, as Member of Derby Corporate Park, LLC, a Kansas limited liability company, to me known to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf and as the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal, the day and year last above written.



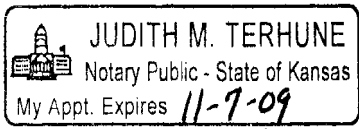
Judith M. Terhune
Notary Public

(My Commission Expires: 11-7-09)

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on the 12th day of August, 2008, before me, the undersigned, a Notary Public, came W. E. Lusk, Jr., Managing Member of Lusk Holdings, a Kansas limited liability company, as Member of Derby Corporate Park, LLC, a Kansas limited liability company, to me known to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf and as the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal, the day and year last above written.



Judith M. Terhune
Notary Public

(My Commission Expires: 11-7-09)



Sedgwick County
Register of Deeds - Bill Meek
DOC.#/FLM-PG: 29011588

Receipt #: 1700195
Pages Recorded: 3
Cashier Initials: DH

Recording Fee: \$16.00
Authorized By:

Date Recorded: 10/3/2008 3:23:54 PM



RESTRICTIVE COVENANT

THIS DECLARATION made this 12th day of August, 2008, by Derby Corporate Park, LLC, a Kansas Limited Liability Company, owner of Derby Corporate Park, Derby, Sedgwick County, Kansas, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

DERBY CORPORATE PARK

Lots 1 through 16, Block A
Lots 1 through 9, Block B
Lots 1 through 15, Block C

WHEREAS, the Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Reserves "A", "B", "C", and "D", DERBY CORPORATE PARK, Derby, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for open space, landscaping, signage, berms, lakes, drainage purposes, and utilities as confined to easements.

Reserves "B", "C", and "D" are reserved for open space, landscaping, berms, lakes, drainage purposes, and utilities as confined to easements.

Reserves "A", "B", "C", and "D", shall be owned and maintained by the lot owners association for the addition.

Please return to:
Karen Morgan
CITY OF DERBY
611 Mulberry
DERBY, KS 67037-3533
(316) 788-6632

3/16

Restrictive Covenant
Page 2 of 3

2. That a Lot Association shall be formed and incorporated as a non-profit corporation under Kansas Statutes at the Declarant's sole cost. Reserves "A", "B", "C", and "D", as designated on the plat of DERBY CORPORATE PARK shall be deeded to the Lot Owner's Association upon its incorporation or within 30 days thereafter.

3. That the declaration of covenants and other provisions of the Lot Owner's Association being formed shall provide specific pertinent language requiring that the Lot Owner's Association shall include the first or any other subsequent phase or phases for the maintenance of any and all common areas contiguous to Reserves "A", "B", "C", and "D", DERBY CORPORATE PARK under the same scope of responsibility as the initial phase of development.

4. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserves, as defined, for the purposes of maintaining such Reserves. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Lot Owners, as may be appropriate, has failed to maintain the reserve in a reasonable and prudent manner.

and,

B. That the appropriate governing body has given written notice to the Declarant or the Lot Owners and neither entity has responded in initiating corrective action within ten (10) days of such notice. If the governing body has taken action to maintain the reserve under this covenant, the Declarant or respective Lot Owner shall pay promptly the costs expended. If the costs are not paid within ten (10) days of the rendering of an account, the costs shall be considered an assessment against respective Lots in Derby Corporate Park, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in title to all Lots as platted in said DERBY CORPORATE PARK, Derby, Sedgwick County, Kansas.

Restrictive Covenant
Page 3 of 3

EXECUTED the day and year first written.

Derby Corporate Park, LLC

By: William Lusk, Jr. Living Trust dated
May 26, 1994, Member

By: Lusk Holdings, L.C., Member

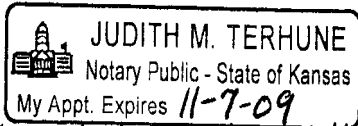
By: *William Lusk Jr*
William Lusk, Jr., Trustee

By: *W. E. Lusk Jr*
W. E. Lusk, Jr., Managing Member

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on the 12th day of August, 2008, before me, the undersigned, a Notary Public, came William Lusk, Jr., Trustee of the William Lusk, Jr. Living Trust dated May 26, 1994, as Member of Derby Corporate Park, LLC, a Kansas limited liability company, to me known to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf and as the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal, the day and year last above written.



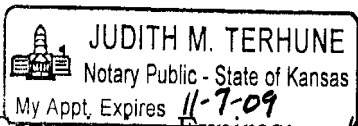
Judith M. Terhune
Notary Public

(My Commission Expires: 11-7-09)

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on the 12th day of August, 2008, before me, the undersigned, a Notary Public, came W. E. Lusk, Jr., Managing Member of Lusk Holdings, a Kansas limited liability company, as Member of Derby Corporate Park, LLC, a Kansas limited liability company, to me known to be the same person who executed the within instrument of writing and such person duly acknowledged to me the execution of the same, for and on behalf and as the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed by name and affixed by official seal, the day and year last above written.



Judith M. Terhune
Notary Public

(My Commission Expires: 11-7-09)

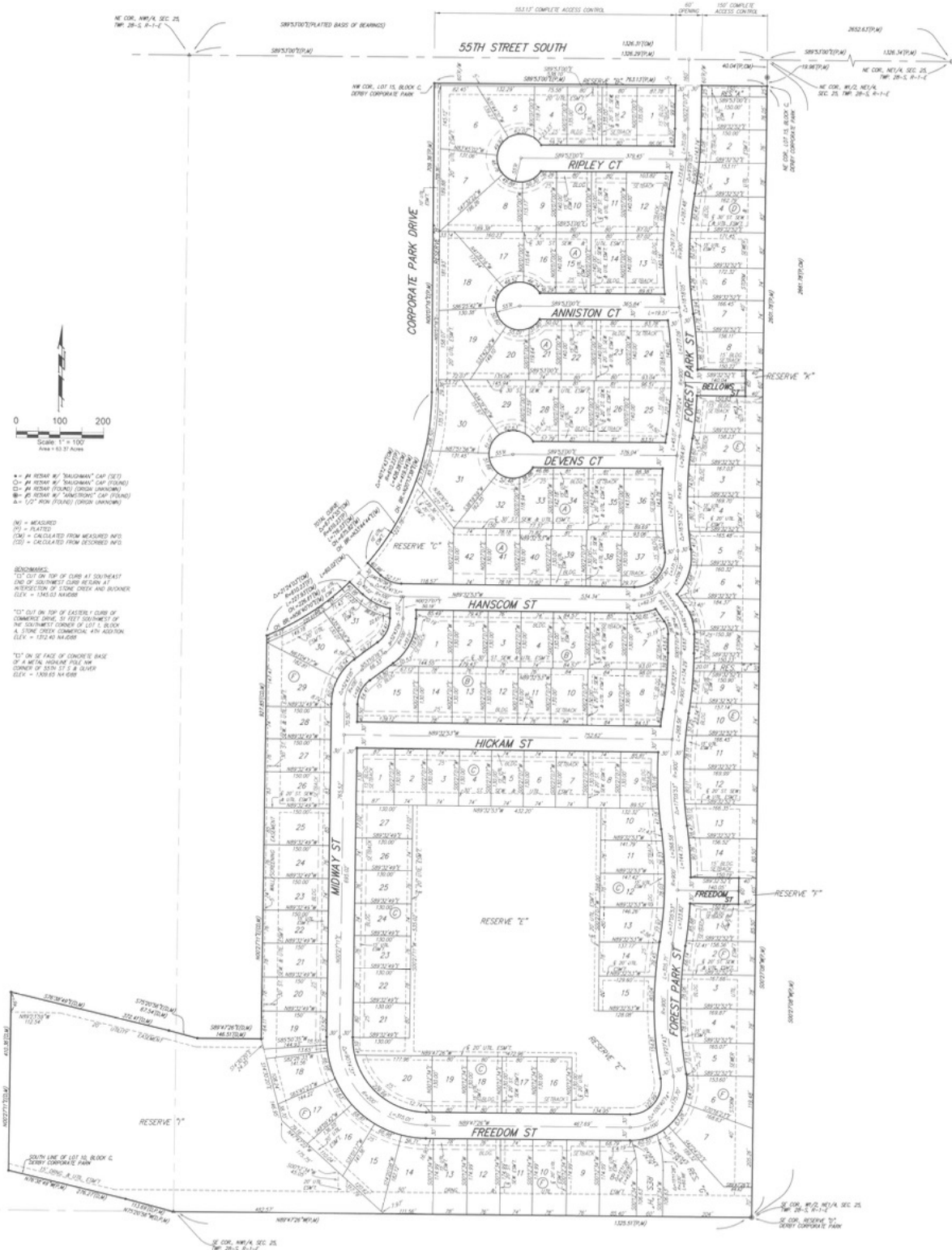
FINAL PLAT

FOXFIRE ADDITION

DERBY, SEDGWICK COUNTY, KANSAS
NE 1/4 & NW 1/4, SEC. 25, TWP. 28-S, R-1-E

MINIMUM BLDG. PAD TABLE		BASE FLOOR ELEVATION		MINIMUM BLDG. PAD ELEVATION FOR SLAB OPENING TO BASEMENT STRUCTURES	
LOT	BLK	SECTION NUMBER	ELEVATION (HIGHER)	SECTION NUMBER	ELEVATION (HIGHER)
1-27	5	1180	1260	1260	1260
18-19	5	1200	1280	1280	1280

NOTE: AS REFLECTED IN THE TABLE ABOVE, TWO FEET HAS BEEN ADDED TO THE ELEVATION FOR SLAB ON GRADE STRUCTURES TO ESTABLISH THE ELEVATION FOR LUMEST OPENING TO BASEMENT STRUCTURES. 4.5' IS REQUIRED FOR BLDG. FOUNDATION BASEMENTS FOR CITY OF DERBY PLUMBING ORDINANCE NO. 7000.



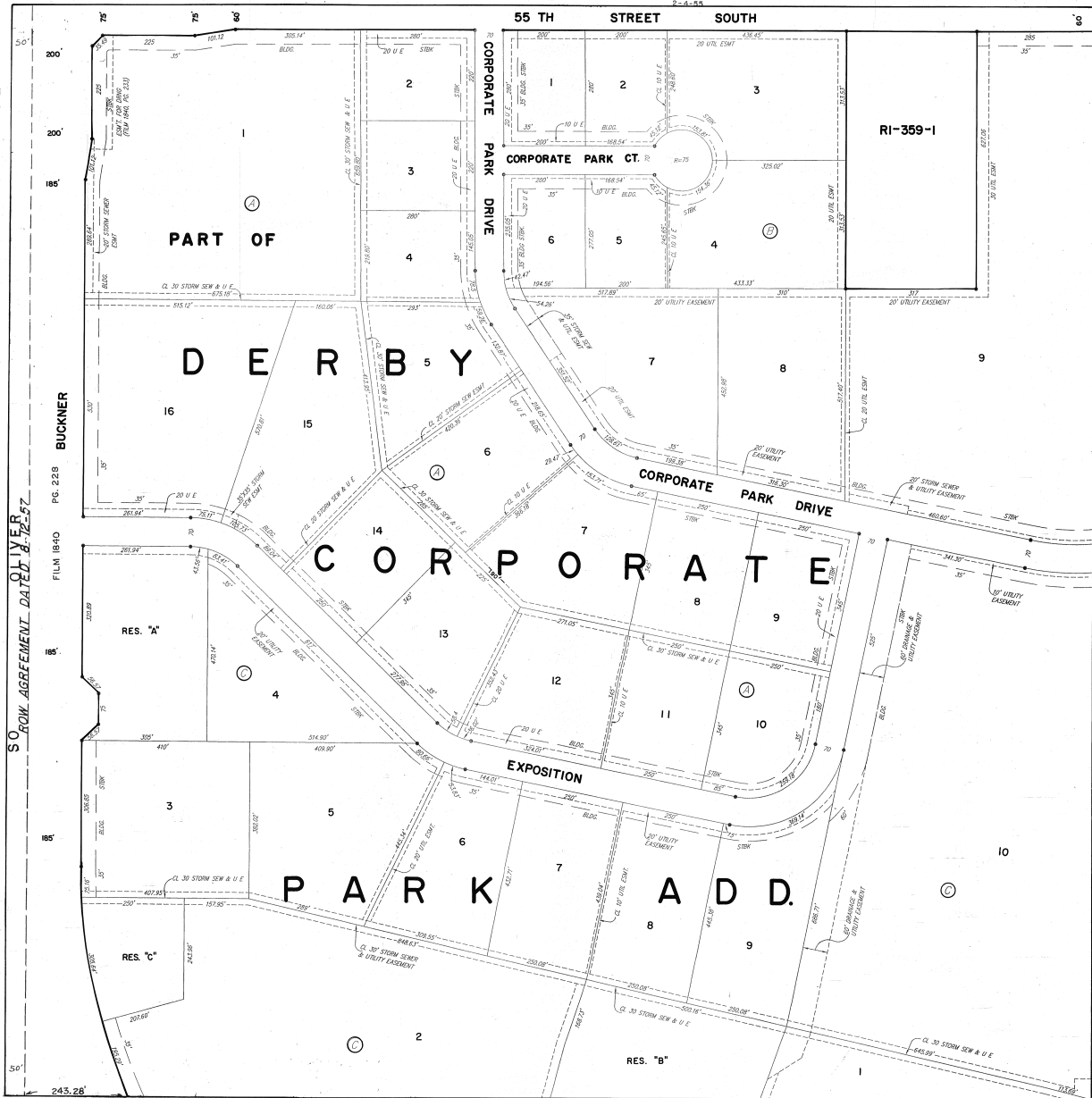
● = #1 REBAR #4 "BAGHAM" CAP (20')
 ○ = #1 REBAR #4 "BAGHAM" CAP (10')
 □ = #1 REBAR #4 (CONGR. LAMINAR)
 ⊙ = #1 REBAR #4 "BAGHAM" CAP (10')
 ⊙ = #1 REBAR #4 (CONGR. LAMINAR)

(M) = MEASURED
 (P) = PLATED
 (C) = CALCULATED FROM MEASURED INFO
 (SD) = CALCULATED FROM SECURED INFO

REMARKS:
 *1' CUT ON TOP OF CURB AT SOUTHWEST CORNER OF SOUTHWEST CORNER RETURN AT INTERSECTION OF STONE CREEK AND BUCKNER ELEV. = 1345.50 NAD83
 *1' CUT ON TOP OF EASTSIDE CURB OF COMMERCE DRIVE, 10 FEET SOUTHWEST OF THE SOUTHWEST CORNER OF LOT 1, BLOCK A, STONE CREEK COMMERCIAL AND ADDITION. ELEV. = 1352.40 NAD83
 *1' ON FACE OF CONCRETE BASE OF A METAL HOUSING PANEL NW CORNER OF 55TH ST & 8 BLK. ELEV. = 1368.85 NAD83

N.W. ¼ SEC. 25 TWP. 28S. R. 1 E.

R1
98



SO ROW AGREEMENT DATED 8-12-87

BUCKNER
PG. 228
FILM 1B40

SEDGWICK COUNTY CLERK