

2692872

DECLARATION OF RESTRICTIONS FOR KENSINGTON AT ST. ANDREWS

This Declaration is made this 10th day of April, 1997, by KENSINGTON LAND DEVELOPMENT CO., L.L.C., a Kansas Limited Liability Company, hereinafter called Developer.

ARTICLE I

STATEMENT OF INTENT

Developer owns the real estate commonly known as KENSINGTON AT ST. ANDREWS in Johnson County, Kansas, as more specifically identified in the Addendum to this Declaration. Developer desires to provide for the preservation of values in the development of said property for residential purposes and for the maintenance of facilities, and, therefore, desires to subject the subject real estate to covenants, restrictions, easements, charges and liens hereinafter set forth which are for the benefit of said property. In connection with the maintenance of certain portions of said real estate, it is the intent and desire of Developer to incorporate the Kensington at St. Andrews Homes Association as a not-for-profit corporation, which Association shall have powers of maintaining and administering the common properties and facilities and enforcing the covenants and restrictions and collecting and disbursing assessments and charges.

THEREFORE, the Developer hereby declares that the subject real estate be held, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth, which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof.

STATE OF KANSAS]
COUNTY OF JOHNSON] SS
FILED FOR RECORD

ARTICLE II

DEFINITIONS

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SARA F. ULLMANN
REGISTER OF DEEDS

For the purpose of these Restrictions, the following words shall be defined as follows:

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(1) "Association" or "Homes Association" shall mean and refer to the Kensington at St. Andrews Homes Association, a Kansas not-for-profit corporation to be formed by Developer for the purpose of serving as the homeowner's association for the Properties, or such other corporation or association as Developer may form under another name for such purpose.

(2) "The Properties" shall mean and refer to all such existing properties as are subject to this Declaration, and all Common Areas, and any addition to the residential community known as Kensington at St. Andrews which Developer may in its discretion make subject to this Declaration as hereinafter set forth.

(3) "Common Areas and Facilities" shall mean and refer to all parks, recreation and swimming pool areas and related facilities, gateways, entrance and ornamental areas, open spaces, streets and street islands, and frontage on certain lots of Kensington at St. Andrews, together with all improvements and property which may be situated thereon, now or hereafter held in the name of the Developer or its successor, the Association, and dedicated to the common use and enjoyment of all the Lot Owners and residents of the Properties.

(4) "Lot" shall mean and refer either to any separately-owned parcel as may be shown by any recorded final subdivision plat of the Properties, with the exception of Common Areas as heretofore defined, or any tract or tracts of land as conveyed, which may consist of one or more lots or parts of one or more lots. Where the context indicates or requires, the term "Lot" includes any structure on the Lot.

(5) "Residence" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

(6) "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot situated upon the Properties. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, unless such person or entity has acquired title pursuant to foreclosure or upon proceeding instead of foreclosure. Lot Owner shall include Developer.

(7) "Developer" shall mean and refer to Kensington Land Development Co., L.L.C., a Kansas Limited Liability Company, its successors and assigns.

(8) "Front Property Line" shall mean the property line of any lot abutting the right-of-way of any street.

(9) "Outbuilding" shall mean an enclosed, covered structure not directly attached to the residence to which it is appurtenant.

(10) "Board" shall mean Board of Directors of the Homes Association.

(11) "Exterior Structure" means any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any trailer, deck, gazebo, greenhouse, dog house or other animal shelter or run, outbuilding, fence, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, basketball goal, swingset, trampoline, tent, sand box, playhouse, treehouse, or other recreational or play structure, shed or other storage building or facility.

ARTICLE III

3.1 Use of Land. None of the Lots may be improved, used or occupied for other than single-family, private residential purposes, and no duplex, flat or apartment house, although intended for residential purposes, may be erected thereon. No residential building which has previously been at another location shall be moved onto any Lot. No trailer or outbuilding erected on any Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any residence of temporary character be erected on any of such Lots or used for human habitation; provided, however, that nothing herein shall prevent the Developer (or any person or entity to whom Developer, in its discretion, grants such right) from erecting temporary buildings and using such temporary buildings or any residence for model, office, sales or storage purposes during the development of the Properties.

3.2 Setback Lines. No part of any residence, except as hereinafter provided, may be erected or maintained on any of the lots nearer to the front street or the side street than is the front building line or the side building line shown on the final plat of any phase of Kensington at St. Andrews in which such residence is located, as such final plat is recorded in the office of the Register of Deeds of Johnson County, Kansas. The final plat of the first phase of Kensington at St. Andrews is recorded in said office at Volume 97 at Page 3. Provided, however, that Developer shall have and does hereby reserve the right with the consent in writing of the record owner of the fee simple title to any such Lot, to change any building line that is shown on said plat on any such Lot or Lots, so long as the change conforms to

such front, rear and side setback lines as are contained in the Municipal Building Code for the City of Overland Park, Kansas, as the same is now enforced or may hereafter be amended.

3.3 Dwelling Size. Any residence one story in height erected on any of said Lots zoned R-1 shall contain a minimum of seventeen hundred (1,700) square feet of enclosed floor area; any split level residence shall contain a minimum of nineteen hundred (1,900) square feet of enclosed floor area; any one and one-half story residence shall contain a minimum of twenty-one hundred (2,100) square feet of enclosed floor area; and any two-story residence shall contain a minimum of twenty-two hundred fifty (2,250) square feet of enclosed floor area. The term "enclosed floor area" as used herein shall mean and include in all cases areas on the first and second floors of the residence enclosed and finished for all-year occupancy, computed on outside measurement of the residence, and shall not mean or include any area in any basement, garage, porch or attic, finished or unfinished. No residence erected on any of said Lots shall be more than two stories in height, unless consented to in writing by Developer. Developer shall have and hereby reserves the right to allow variances from the minimum square footage requirements set forth above.

3.4 Approval of Plans and Post-Construction Changes; Grading.

(a) No Residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof have been submitted to and approved in writing by Developer or, in the case of delegation of such approval power by Developer as provided herein, the Board of Directors. Nor shall any change or alternation in such building plans, specifications, exterior color scheme, materials, location, elevation, grade and landscaping thereof be made until such change or alternation has been submitted to and approved in writing by the Developer. Upon any such request for approval, the party requesting such approval shall submit simultaneously with the request the following documentation: (i) two complete sets of plans with exterior elevations delineating front elevation, rear elevation, both side elevations and height of foundation; (ii) a list of all exterior materials to be used which will include roof, masonry, siding and windows; and (iii) a schedule of exterior colors to be used. Such documentation is intended only as a minimum requirement and the Developer shall be free to request any and all other documentation that Developer deems necessary. All such documentation shall be submitted in duplicate and shall be signed by the party requesting its approval. In the event that either exterior paint colors or landscaping details are unavailable or otherwise not submitted with the request for approval, Developer

(or, in the case of delegation of such approval power by Developer as provided herein, the Board of Directors) may, at any time within sixty (60) days after the completion of exterior painting or the installation of landscaping, notify the Lot Owner of the disapproval of exterior paint colors or landscaping and the Lot Owner shall forthwith modify such exterior colors or landscaping as may be required to obtain approval.

(b) All final grading of each Lot shall be in accordance with the master grading plan approved by the City of Overland Park, any related grading plan furnished by the Developer for the development phase containing the Lot and any specific site grading plan for the Lot approved by the Developer. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. All sump pumps shall be drained away from adjacent residences (actual and future). No changes in the final grading of any Lot shall be made without the prior written approval of Developer and, if necessary, the City of Overland Park. Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to achieve final grade or maintain any Lot in accordance with the master grading plan or any approved Lot grading plan, or for the Developer not requiring a Lot grading plan and compliance therewith. Developer does not represent or guarantee to any Owner or other person that any grading plan for the Lots that the Developer may approve or supply shall be sufficient or adequate or that the Lots will drain properly or to any Owner's or other person's satisfaction.

(c) Following the completion of construction of any Residence or Exterior Structure, no exterior colors or landscaping thereof or with respect thereto shall be changed and no exterior additions or alterations to any structure shall be made unless and until the changes have been submitted to and approved in writing by the Developer or, in the case of delegation of such approval power by Developer as provided herein, the Board of Directors. In the event that either exterior paint colors or landscaping details are unavailable or otherwise not submitted with the request for approval, Developer (or, in the case of delegation of such approval power by Developer as provided herein, the Board of Directors) may, at any time within sixty (60) days after the completion of exterior painting or the installation of landscaping, notify the Lot Owner of the disapproval of exterior paint colors or landscaping and the Lot Owner shall forthwith modify such exterior colors or landscaping as may be required to obtain approval. All replacements of all or any portion of a structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same material as the original structure unless the changes have been submitted to and approved in writing by the Developer or, in the case of delegation of such approval power by the Developer as provided herein, the Board of Directors.

(d) Architectural Control in the properties, including the power of approval as set forth in subsections (a) and (b) of this section, shall be solely the function of Developer. Developer may, at its option, delegate all or any part of the function of architectural control to the Board of Directors of the Association. If such delegation is made, architectural control shall be the function and obligation of the Board of Directors, and it may not be delegated to a separate architectural control committee or other similar group. Any such delegation by Developer of all or part of its architectural control function to the Board of Directors shall not be effective unless done in writing and signed by a person authorized to act on behalf of Developer.

(e) The rights of approval created in this Section 3.4 shall extend and remain in existence so long as Developer or its assigns owns any Lot within the Properties.

3.5 Building Material Requirements. Subject to the right of Developer to approve all building materials as set forth in Section 3.4 above, the following building material requirements shall apply to all Residences and Exterior Structures located or erected within the Properties: (i) exterior walls of all buildings, structures and appurtenances thereto shall be made of brick, stone, stucco, wood shingles, wood siding, wood paneling, glass blocks, or any combination thereof; (ii) windows, doors and louvers shall be of wood, wood clad, fiberglass or metal and glass; (iii) roofs shall be covered with wood shingles, wood shakes, composition shingles, asphalt shingles, built-up asphalt, concrete tile, slate or tile. Notwithstanding the foregoing provisions of this Section 3.5 requiring specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the area shall be acceptable upon written approval by Developer. Exteriors, except roofs and shake sidewalls, shall be covered with not less than two coats of good paint or stain. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after commencement of construction. In the event of fire, windstorm, or other damages, no building shall be permitted to remain in damaged condition longer than three (3) months.

3.6 Buildings or Uses Other Than for Residential Purposes; Noxious Activities; Miscellaneous.

(a) Except as otherwise provided in Article 3.1 above, no Residence or Exterior Structure shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent a Lot Owner from maintaining an office area in his residence purely

as an ancillary use with no regular customers or inviting of customers to the residence, or signs or advertising of any type, on or off the Lot, and in accordance with the applicable ordinances of the City of Overland Park, Kansas.

(b) No noxious or offensive activity shall be carried on with respect to any Lot, nor shall any grass clippings, trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area, or be permitted to accumulate or remain on any Lot, nor shall anything be done which may be or become an annoyance or a nuisance to the neighborhood, including, but not limited to, mechanical work on automotive or other equipment of any kind. Each Lot Owner shall properly maintain his lot and residence in a neat, clean and orderly fashion. All Residences and Exterior Structures shall be kept and maintained in good condition and repair at all times. Developer retains the right to keep and maintain such materials and equipment as it deems reasonably necessary to further development of this and any adjacent property owned by Developer.

(c) The following restrictions shall apply to motor vehicles, trucks, buses, boats, trailers, campers and similar apparatus:

(i) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage;

(ii) Overnight parking of motor vehicles of any type or character in public streets, common areas or vacant Lots is prohibited;

(iii) Trucks or commercial vehicles with gross vehicle weight of 12,000 lbs. or over are prohibited in the Properties except during such time as such truck or commercial vehicle is actually being used for the specific purpose for which it is designed;

(iv) Recreational motor vehicles of any type or character are prohibited except: (a) when stored in an enclosed garage; (b) when temporarily parked for the purpose of loading an unloading (maximum of one consecutive night); or (c) with prior written approval of Developer; and

(v) Passenger cars and passenger vans may be parked overnight in garages or paved driveways only. Except as provided in (iv) above, no vehicle, truck, bus, boat, trailer, camper or similar apparatus (other than a passenger car or passenger van) shall be left or stored overnight except in an enclosed garage.

(d) No television, radio, citizens' band, short wave or other antenna, satellite dish, solar panel, windmill, wind-driven electrical generating system, sun energy system, clothes line or pole, or other unsightly projection shall be attached to the

exterior of any residence or erected in any yard; provided, however, that satellite dishes not exceeding 18" in diameter may be allowed by Developer or its designee, subject to approval as to location, appearance, landscaping and any other criteria which Developer or its designee deems appropriate. Should any part or all of the restriction set forth in the preceding sentence be held by a court of competent jurisdiction to be unenforceable for any reason, Developer or its designee shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the neighborhood and any such rules and regulations shall be binding upon all of the Lots. No lights or other illumination shall be higher than the residence.

(e) All garage doors shall remain closed at all times except when necessary for entry or exit.

(f) No garage sales, sample sales or similar activities shall be held within the Properties without the written consent of the Developer or its designee.

(g) No mailbox or standard therefor (other than those established by the United States Postal Service) shall be erected or installed without prior written approval of style, material, construction and location being granted by the Developer or its designee.

(h) No speaker, horn, whistle, siren, bell or other sound device, except intercoms and those used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any residence or in any yard.

(i) All public utilities shall be underground.

(j) In the event of vandalism, fire, wind, storm or other damage, no building shall be permitted to remain in damaged condition for longer than three (3) months.

(k) No shed, barn, detached garage or other storage facility shall be erected upon, moved onto or maintained upon any yard. Storage shall be permitted under a deck provided such area is fenced or otherwise screened.

(l) No fuel storage tanks of any kind shall be permitted.

(m) No exterior Christmas lights and/or decorations may be erected or maintained on any of the lots hereby restricted, except during a sixty (60) day period beginning November 15th of each calendar year.

(n) Dogs shall be confined. No dogs shall be allowed to run at large on the property hereby restricted.

(o) No greenhouses may be constructed or maintained on any of the Lots hereby restricted, without prior consent in writing by Developer.

(p) No air conditioning apparatus or unsightly projections shall be attached or affixed to the front of any residence.

(q) No bright light (Mercury Vapor or Sodium) shall be placed on the exterior of any structure or constructed separately without the written consent of Developer.

3.7 Exterior Structures.

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except: (i) with and pursuant to the advance written approval of the Developer or its designee, and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below; provided, however, that the approval of the Developer or its designee shall not be required for any deck, gazebo or similar Exterior Structure that has been specifically approved by the Developer as part of the residential construction plans approved by the Developer and which has been built in accordance with such approved plans.

(b) No residential fence or privacy screen (other than those installed by Developer) may be built, constructed, erected or maintained on any Lot unless first approved in writing by Developer or its designee pursuant to a fence permit application to be submitted by the Lot Owner. The fence permit application shall contain such information as Developer or its designee may require, including, at a minimum, a plot plan showing the location of the entire proposed fence on the lot in relation to the lot lines and the outline of the residence, and such additional plans as are required to allow evaluation of the appearance and type of construction of the fence, including types of materials and finished color.

All fences and privacy screens shall be constructed with the finished side out. No fence shall extend toward the front of the residence beyond the rear corners of the residence, except to align with the rear corners of an adjacent residence. In addition to any requirements of Developer or its designee, all fences and privacy screens on any lot must comply with all applicable codes, regulations and standards of the City of Overland Park.

Fence permit applications otherwise complying with the requirements of Developer or its designee shall be approved if the following fence design standards are met: (i) no metal (other than wrought iron), chain link or similar fence or privacy screen shall be permitted; (ii) residential fences shall be constructed

substantially of wrought iron or cedar or redwood material. Posts and horizontal structural members may be constructed of CCA treated lumber; (iii) the maximum fence height is five (5) feet above ground; and (iv) if constructed of wooden materials, the type of fence constructed is one of the following: (a) Solid Picture Frame consisting of 1" x 4" or 1" x 5" cedar or redwood vertical slats situated in the middle of 2" x 4" frame with 4" x 4" posts; (b) Spaced Picture Frame consisting of 1" x 4" or 1" x 6" cedar or redwood vertical slats spaced a maximum of 2" apart, situated in the middle of a 2" x 4" frame with 4" x 4" posts; (c) Louver Overlap Closed Picture Frame consisting of 1" x 4" cedar or redwood vertical slats overlapping 2" on a 45° angle, situated in the middle of 2" x 4" frame with 4" x 4" posts; and (d) Louver Overlap Open consisting of 1" x 4" cedar or redwood vertical slats on a 45° angle with no overlap, situated in the middle of a 2" x 4" frame with 4" x 4" posts.

(c) All basketball goals shall be free-standing and not attached to the residence unless the Developer or its designee approves such location in writing based on a determination that there are compelling reasons. All basketball goals shall be consistent with the standard designs and materials to be selected by the Developer or its designee. All backboards shall be clear or white and made of fiberglass, plastic or other approved material. All poles shall be an earth-tone color. There shall be only one basketball goal per Lot, the location of which shall be approved by Developer. The Developer or its designee shall have the right to establish reasonable rules regarding the hours of the use of basketball goals and any such rules shall be binding upon all of the Lots and Owners.

(d) All recreational or play structures (other than basketball goals) shall be located behind the back building line of the residence.

(e) No swimming pools, hot tubs, whirlpools or other water facilities or appurtenances thereto may be built, constructed or erected without the prior written consent of Developer. Swimming pools, hot tubs, whirlpools and other water facilities which are allowed may be covered with flat storage covers to protect the same from leaves, animals, etc. when they are inoperable. No pool or tub enclosures commonly referred to as glass, plastic, aluminum, metal or fiber enclosures or air structures, air bubbles or air covers shall be allowed at any time. No pool or tub enclosures, fences or appurtenant structures shall be allowed that Developer or the Homes Association deems unsightly or objectionable to other Lot Owners in the subdivision. Any pool, tub or water facility permitted or allowed shall be properly maintained at all times.

(f) All outside doghouses and other animal shelters and runs shall be located in the back yard, shall be up against or within two (2) feet of the residence and located as near as possible to

the middle of the rear wall of the residence, shall be painted the same color as the residence and shall have roofs that are compatible with the residence. No outside doghouse, animal shelter or run shall be built or maintained on any Lot without the prior written consent of Developer, issued pursuant to a written application submitted by the Lot Owner.

(g) No Exterior Structure that is prohibited under Section 3.6 above shall be permitted under this Section 3.7.

3.8 Animals. No animal of any kind shall be raised, bred or kept on any Lot except that dogs, cats and other household pets may be kept, as long as they are in compliance with the Municipal Code for the City of Overland Park, Kansas, as the same is now enforced or may hereafter be amended. Owners shall immediately clean up after their pets on all streets, common areas and Lots owned by others.

3.9 Driveways. All driveways must be improved with hard surface, consisting of a minimum of four (4) inches of reinforced concrete or other materials approved in writing by Developer. Gravel driveways or driveways consisting of a crushed rock base with prime and seal coat will not be permitted.

3.10 Signs. No sign, advertisements, billboards, or advertising structures of any kind may be erected or maintained on any of said Lots without the consent, in writing, of Developer; provided, however, that permission is hereby granted for erection and maintenance of not more than one advertising board on each lot or tract as sold and conveyed, which advertising board shall not be more than seven (7) square feet in size and may be used for the sole and exclusive purpose of advertising for sale or lease the lot or tract upon which it is erected.

3.11 Landscaping and Lawns. Prior to occupancy, and in all events within six (6) months after commencement of construction, all front and back lawns, including all areas between each Residence and any adjacent street, regardless of the distance and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that a Lot Owner may leave a portion of the Lot as a natural area with the express written permission of the Developer. Within such time, the Owner shall landscape the Lot to the same standards as are generally prevailing throughout the Properties, which shall include a minimum expenditure of \$750.00 on plantings in the front yard. All vegetable gardens shall be located in the back yard. The Owner of each Lot shall keep the lawn uniformly mowed and clipped with a

length of grass not to exceed four (4) inches and shall properly maintain and replace all trees and landscaping. Noxious weeds and plants shall be kept seasonably mowed and dead or unsightly growth shall be removed from all improved Lots.

3.12 Easements for Public Utilities; Drainage; Maintenance.

The Developer shall have, and does hereby reserve the right to locate, erect, construct, maintain and use or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water mains and lines, electric and telephone lines and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on the recorded plat of the Properties or any Common Area. All utility easements and rights-of-way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of all Lot Owners in the Properties and the Association as a cross-easement for utility line or service maintenance.

The Developer shall have and does hereby reserve for itself, its successors and assigns and the Association and its successors and assigns, an easement over and through all unimproved portions of each Lot in the Properties for the purpose of performing the duties of the Association and maintaining any Common Area.

No water from any roof, downspout, basement or garage drain or surface drainage shall be placed in or connected to any sanitary sewer line; nor shall any other connection of any kind be made to a sewer line without the prior written approval of the Developer.

3.13 Landscape Easement and Common Areas. All portions of the Properties reserved, set aside or granted as a landscape easement or license, or as Common Areas, as indicated by mark, symbols or legend on any plat of land contained within the Properties and filed with the Office of the Register of Deeds of Johnson County, Kansas, shall be interpreted as the grant by Developer of an easement or license on, over and across any land so indicated to the Kensington at St. Andrews Homes Association. Said easement or license shall give the Association the right to enter upon, over and across any land on which such an easement or license is granted, for the purpose of improving, maintaining, landscaping, designing and otherwise controlling the design and appearance of any area so indicated.

ARTICLE IV

HOMES ASSOCIATION

4.1 Membership. Every Lot Owner shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration.

4.2 Voting Classes. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Lot Owners, with the exception of Developer, and shall be entitled on all issues to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine and advise the secretary prior to any meeting. In no event shall more than one (1) vote be cast with respect to any Lot. In the absence of agreement by multiple owners of a Lot, that Lot's vote shall be suspended if more than one person seeks to exercise it.

Class B. The Class B member(s) shall be Developer (Kensington Land Development Co., L.L.C., a Kansas Limited Liability Company, its successors and assigns) and shall be entitled to twenty-five (25) votes for each Lot owned.

4.3 Articles of Incorporation and Bylaws. Except as specifically set forth in this Declaration, all provisions applicable to notice, voting and quorum requirements for all actions to be taken by the Association shall be set forth in its Articles of Incorporation and Bylaws. In any event, if any provisions set forth in this Declaration applicable to notice, voting and quorum requirements are in conflict with any provisions of Kansas law applicable to not-for-profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Kansas law shall control.

ARTICLE V

COMMON AREAS

5.1 Developer's Right to Retain. The Developer may retain the legal title to the Common Areas until such time as it has completed improvements thereon and until such time as in the

opinion of the Developer, the Association is able to maintain the same. The Developer, or its assigns, shall have a right of access over all streets for the purpose of developing adjacent land.

5.2 Lot Owner's Easements of Enjoyment. Every Lot Owner shall have a right and easement of enjoyment in and to the Common Areas, but only for their intended use, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facilities situated upon the Common Areas and to impose reasonable limits on the number of guests who may use the facilities;

(b) The right of the Association to suspend the voting rights and right to use any of the recreational facilities by a Lot Owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed ninety (90) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board of Directors of the Association.

(d) The ownership by the Homes Association of any Common Areas and the right and easement of enjoyment of the Lot Owners in the Properties as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, maintenance and utility easements over, under, upon and through such Common Area, as provided in Article III, Section 3.12 above.

(e) No Lot Owner shall improve, destroy or otherwise alter any Common Area without the express written consent of the Developer.

(f) Any gates or similar security facilities that may be installed as or in a Common Area shall be constructed and operated in a manner so as to permit access at all times by emergency vehicles.

(g) The Developer and the Association shall have the right to make additional rules, regulations and restrictions pertaining to the use of any Common Area.

5.3 Delegation of Use. Any Lot Owner may delegate, in accordance with the bylaws of the Association, and subject to reasonable rules, regulations and limitations as may be adopted in

accordance therewith, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments. The Developer, for each Lot owned within the properties, hereby covenants, and each Lot Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements;

such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with 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. Such owner's personal obligation for delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them.

No charge shall be made for annual or special assessments on any Lot until the same is fully improved and title thereto is conveyed to a Lot Owner for the purpose of occupancy of a Residence located on such Lot. No Lot shall be charged with either an annual or special assessment, nor shall any lien attach for same, during any period of time that the Lot is owned by Developer, his successor or assigns, or any builder to whom title is conveyed for the purpose of construction of a residence prior to re-sale.

6.2 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the limited improvement and normal maintenance of the Common Areas. The Board of Directors and the Association will have the power to fix the assessments in such amounts as the Board shall determine in its discretion.

5.3 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, reconstruction, repair or replacement of capital improvements upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting called for this purpose.

5.4 Notice and Quorum for Any Action Authorized Under Section 6.3. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3 of this Article shall be sent to all members not less than fourteen (14) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence, in person or by proxy, of members entitled to cast 50 percent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. If the required quorum is not present at any such subsequent meeting, another meeting may be called subject to the same notice requirement, and the required quorum at the second subsequent meeting, or any subsequent meeting thereafter called for lack of a quorum, shall continue to be one-half (1/2) of the required quorum at the initial meeting called for such purpose. In no event shall the required quorum fall below the presence, in person or by proxy, of members entitled to cast twenty-five (25) percent of all the votes of each class of membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.5 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, annual or other periodic basis as the Board may determine.

6.6 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall be estimated, determined and billed in advance for the coming calendar year. The annual assessments 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 thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every Lot Owner subject thereto. The due date shall be established by the

Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of assessments on the Lot is binding upon the Association as of the date of its issuance.

6.7 Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the prime lending rate as established by the First National Bank of Kansas City, Missouri, as of the due date of the assessment. The Board of Directors may also establish a reasonable late charge, in such amount as the Board may determine, to be added to any annual or special assessment if not paid within thirty (30) days after the due date thereof. 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.

6.8 Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. The sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VII

GENERAL PROVISIONS

7.1 Property Subject to This Declaration; Additions Thereto.

(a) Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration as of the date of this Declaration is that property more specifically identified in the addendum to this Declaration.

(b) Additions to Existing Property. Developer reserves the right to add additional real estate to this Declaration in the following manner: If Developer is the owner of any real estate finally platted as a part of the Kensington at St. Andrews subdivision to the City of Overland Park, Johnson County, Kansas, or land abutting said subdivision (even if separated by a public or private street or by land dedicated or reserved for public or private streets), Developer may add any part thereof to this Declaration without the consent of Class A members of the Association at any time by filing of record a supplementary

Declaration of Covenants, Conditions and Restrictions, which shall subject said additional real estate and all improvements thereon to all covenants, conditions, restrictions and easements set forth in this Declaration. Said supplementary Declaration may contain such additional covenants, conditions and restrictions applicable solely to said additional real estate as may be necessary or desirable as determined by the Developer. In no event, however, shall such supplementary Declaration modify or add to the covenants established by this Declaration for the existing property without the written consent, obtained after at least thirty (30) days notice, of sixty percent (60%) or more of the Class A memberships and all Class B memberships of the Association.

7.2 Duration. The covenants and restrictions of this Declaration shall run and bind the land and shall inure to the benefit of and be enforceable by the Developer, or its successors and assigns, or by the Lot Owner of any real estate subject to the Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years each; provided, however, that the Owners of at least two-thirds (2/3) of the Lots within the Properties as then constituted may release all or any part of the Properties from all or any part of the provisions of this Declaration, as it may be then amended, by executing, acknowledging and recording an appropriate agreement for such purpose, at least one (1) year prior to the expiration of the initial 20-year term hereof, or to a subsequent expiration date, whichever is applicable. If the rule against perpetuities is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of twenty (20) years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as of the date of such execution.

7.3 Notices. Any notice required to be sent to any member or Lot Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears as a member or Lot Owner on the records of the Developer or Association at the time of such mailing.

7.4 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover

damages or both and against the land to enforce any lien created by these covenants and failure by the Association or any Lot Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

7.5 Severability. In the event any one of these covenants or restrictions are held invalid by a judgment or court order, this shall in no way effect any other provisions which shall remain in full force and effect.

7.6 Amendment. By written consent of two-thirds (2/3) of the Lot Owners within the Properties as then constituted, evidenced by a Declaration duly executed and acknowledged by such owners and recorded in the office of the Register of Deeds of Johnson County, Kansas, this instrument may be modified and amended. Notwithstanding anything seemingly to the contrary in this Section 7.6 or elsewhere in this Declaration, Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, all as from time to time amended or supplemented, if either the Veteran's Administration or the Federal Housing Administration or any successor agencies thereto shall require such action as a condition precedent to the approval by such agency of the Properties or any part of the Properties or any Lot in the Properties for federally-approved mortgage financing purposes under applicable Veteran's Administration or Federal Housing Administration or similar programs, laws and regulations.

7.7 Insurance. The Board of Directors of the Association shall obtain and maintain, to the extent reasonably available, such forms, types and amounts of insurance coverage as the Board, in its discretion, deems advisable. Types of insurance the Board may obtain include, but are not limited to, casualty insurance to cover damage or loss, up to the replacement cost, of improvements located upon real estate owned by the Association by reason of fire or other hazard covered by a standard extended coverage endorsement; casualty insurance to cover such other risks as shall customarily be covered with respect to property similar in construction, location and use; public liability insurance; worker's compensation insurance to the extent necessary to comply with any applicable law; a legal expense indemnity endorsement, or its equivalent, affording protection for the officers and directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or director shall have been made a party by reason of his or her services as such; fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees or volunteers; and such other

policies of insurance, including blanket policies of insurance for the common properties, if authorized by applicable Kansas law and by the Board of Directors of the Association.

7.8 Assignment of Developer's Rights. Developer shall have the right and authority, by appropriate agreement made expressly for that purpose, to assign, convey and transfer to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to Developer, and upon such assignment the assignee shall then for all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities of the Developer hereunder.

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

KENSINGTON LAND DEVELOPMENT CO., L.L.C.,
a Kansas Limited Liability Company

By: Merlyn L. Stuffings
Merlyn L. Stuffings, Presiding Officer

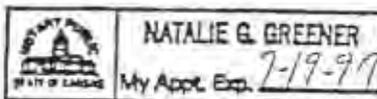
STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

On this 10th day of April, 1997, before me, a Notary Public in and for the County and State aforesaid, personally appeared, MERLYN L. STUFFINGS, presiding officer of Kensington Land Development Co., L.L.C., a Kansas Limited Liability Company, to me known to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

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

My Commission Expires:
July 19 1997

Natalie G. Greener
Notary Public



ADDENDUM TO
DECLARATION OF RESTRICTIONS FOR KENSINGTON AT ST. ANDREWS

The real estate which is the subject of the Declaration of Restrictions for Kensington at St. Andrews, executed on the 10th day of April, 1997, is legally described as follows:

Lots 1 through 47, inclusive;

Lot 48, except that part described as follows:

Beginning at the Northwest corner of said Lot 48; thence N. 87° 49' 16" E. along the North line of said Lot 48, a distance of 108.16 feet; thence S 67° 00' 00" W., a distance of 96.68 feet, to a point on the Easterly right-of-way line of 141st Street, as now established; thence N. 29° 32' 58" W. along the Easterly right-of-way line of said 141st Street, a distance of 38.70 feet, to the point of beginning;

Lots 49 through 61, inclusive; and

Tract A;

all being situated in KENSINGTON AT ST. ANDREWS, FIRST PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

Said plat, document number 2644739, is recorded in the office of the Register of Deeds of Johnson County, Kansas, in Plat Book 97 at Page 3.

DECLARATION OF RESTRICTIONS

ADD 2nd Plat
less L-62,63

This Declaration is made this 11 day of May,
1998, by KENSINGTON LAND DEVELOPMENT II, L.L.C., a Kansas limited
liability company, hereinafter called Developer.

WHEREAS, Developer is the successor in interest to Kensington
Land Development Co., L.L.C., which owned a portion of the real
estate commonly known as KENSINGTON AT ST. ANDREWS in Johnson
County, Kansas and which had previously executed a Declaration of
Restrictions for such property, the same being filed of record in
the office of the Register of Deeds of Johnson County, Kansas as
Instrument No. 2692872, recorded in Volume 5156 at Page 551; and

WHEREAS, Developer owns the real estate commonly known as
KENSINGTON AT ST. ANDREWS, SECOND PLAT, in Johnson County, Kansas,
which is a part of the Kensington at St. Andrews subdivision, and
Developer desires to add portions of said real estate to the
Declaration of Restrictions for Kensington at St. Andrews and to
make said real estate subject to the covenants, conditions,
restrictions and easements set forth in said Declaration;

NOW, THEREFORE, Developer hereby declares that the real estate
described in the Addendum attached hereto shall, as of the date of
the recording of this Declaration, be held, sold, conveyed and
occupied subject to the covenants, restrictions, easements, charges
and liens set forth and contained in the Declaration of
Restrictions for Kensington at St. Andrews, recorded in the office
of the Register of Deeds of Johnson County, Kansas as Instrument

No.2692872 in Volume 5156 at Page 551, which restrictions shall run with the real property described in the Addendum attached hereto and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and which shall inure to the benefit of each owner thereof. Said Declaration of Restrictions for Kensington at St. Andrews is hereby incorporated by this reference as the Declaration of Restrictions for the real estate described in the attached Addendum.

STATE OF KANSAS)
COUNTY OF JOHNSON) ss.
FILED FOR RECORD

1998 MAY 12 P 3:27.4

10⁰⁰ SARA F. ULLMANN
REGISTER OF DEEDS

KENSINGTON LAND DEVELOPMENT II,
L.L.C., a Kansas limited
liability company

By: James R. Haas, Jr.
James R. Haas, Jr.
Manager

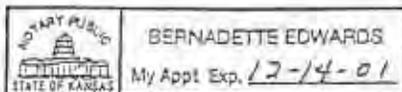
STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this 12th day of May, 1998, came JAMES R. HAAS, JR., who is personally known to me to be the same person who executed the within instrument of writing on behalf of Kensington Land Development II, L.L.C., a Kansas limited liability company, and duly acknowledged the execution of the same.

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

My Commission Expires:
Dec. 14, 2001

Bernadette Edwards
Notary Public



ADDENDUM TO DECLARATION OF RESTRICTIONS
FOR KENSINGTON AT ST. ANDREWS, SECOND PLAT

The real estate which is the subject of the Declaration of Restrictions for Kensington at St. Andrews, Second Plat, executed on this 11 day of May, 1998, is legally described as follows:

Lots 64 thru 81 and Lots 83 thru 107, KENSINGTON AT ST. ANDREWS, SECOND PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas, and all that part of Lot 82, KENSINGTON AT ST. ANDREWS, SECOND PLAT, a subdivision of land in the City of Overland Park, Johnson County, Kansas, except that part thereof described as follows: Beginning at the Northeast corner of said Lot 82; thence South $48^{\circ}34'06''$ West, along the Southeasterly line of said Lot 82, a distance of 81.75 feet; thence North $54^{\circ}50'38''$ West, a distance of 85.29 feet to a point on the North line of said Lot 82; thence North $87^{\circ}49'16''$ East along the North line of said Lot 82, a distance of 131.12 feet to the point of beginning.

3068334 ✓

3RD PLAT
STATE OF KANSAS }
COUNTY OF JOHNSON } 55
FILED FOR RECORD
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DECLARATION OF RESTRICTIONS

SARA F. ULLMANN
REGISTER OF DEEDS

THIS DECLARATION OF RESTRICTIONS (hereinafter "this Declaration") is made this 3 day of December 1999, by KENSINGTON LAND DEVELOPMENT II, L.L.C., a Kansas limited liability company (hereinafter called "Developer").

WHEREAS, Developer is the successor in interest to Kensington Land Development Co., L.L.C., which owned a portion of the real estate commonly known as KENSINGTON AT ST. ANDREWS in Johnson County, Kansas, and which previously executed a Declaration of Restrictions (hereinafter "the Declaration of Restrictions") for such property, the same being filed of record in the office of the Register of Deeds of Johnson County, Kansas, as Instrument No. 2692872, recorded in Volume 5156 at Page 551; and

WHEREAS, Developer also owns the real estate commonly known as KENSINGTON AT ST. ANDREWS, SECOND PLAT, in Johnson County, Kansas, which is a part of the Kensington at St. Andrews subdivision, a portion of which Developer added and made subject to the Declaration of Restrictions by a Declaration of Restrictions filed of record in the office of the Register of Deeds of Johnson County, Kansas, as Instrument No. 282291, recorded in Volume 5584 at Page 466; and

WHEREAS, Developer owns the real estate commonly known as KENSINGTON AT ST. ANDREWS, THIRD PLAT, in Johnson County, Kansas, which is a part of the Kensington at St. Andrews subdivision, and Developer desires to add said real estate to the Declaration of Restrictions for Kensington at St. Andrews and to make said real estate subject to the covenants, conditions, restrictions and easements set forth in the Declaration of Restrictions;

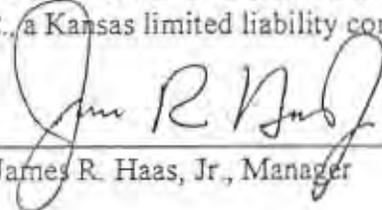
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rk

NOW, THEREFORE, Developer hereby declares that the real estate described in the
Ret: Mark Singer
PO Box 15449
Lenexa KS 66215

Addendum attached hereto and by this reference incorporated herein shall, as of the date of the recording of this Declaration, be held, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens set forth and contained in the Declaration of Restrictions for Kensington at St. Andrews, recorded in the office of the Register of Deeds of Johnson County, Kansas as Instrument No.2692872 in Volume 5156 at Page 551, which restrictions shall run with the real property described in the Addendum attached hereto and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof. The Declaration of Restrictions for Kensington at St. Andrews is hereby incorporated by this reference as the Declaration of Restrictions for the real estate described in the attached Addendum.

FURTHER, Lots 128 thru 139, inclusive, referenced and described in the real property described in the Addendum attached hereto shall not have homes built on them that are any smaller in size than the existing model homes in the KENSINGTON AT ST. ANDREWS subdivision (approximately 2,900 square feet).

KENSINGTON LAND DEVELOPMENT II,
L.L.C., a Kansas limited liability company

By: 
James R. Haas, Jr., Manager

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

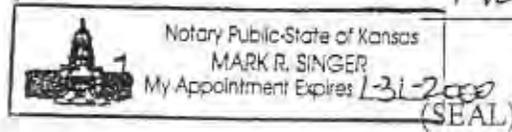
BE IT REMEMBERED, that on this 3rd day of December, 1999, came JAMES R. HAAS, JR., who is personally known to me to be the same person who executed the within instrument of writing on behalf of Kensington Land Development II, L.L.C., a Kansas limited liability company, and duly acknowledged the execution of the same.

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

My Commission Expires: 1/31/2000

Mark R. Singer
Notary Public

Mark R. Singer
(Print/Type Name)



**ADDENDUM TO DECLARATION OF RESTRICTIONS
FOR KENSINGTON AT ST. ANDREWS, THIRD PLAT**

The real estate which is the subject of the Declaration of Restrictions for Kensington at St. Andrews, Third Plat, executed on this 3rd day of December, 1999, is legally described as follows:

Lots 108 thru 150, KENSINGTON AT ST. ANDREWS, THIRD PLAT, a subdivision in the City of Overland Park, Johnson County, Kansas.