

DECLARATION OF RESTRICTIONS OF
NORTHWOOD TRAILS, A SUBDIVISION
IN THE CITY OF OLATHE, JOHNSON COUNTY, KANSAS

This declaration is made this 8th day of February , 1986, by Northwood Development Company, a Kansas general partnership, by and through Dee-Kay Developers, Inc., a Kansas corporation, one of the authorized general partners.

WHEREAS, Northwood Development Company, (hereinafter referred to as “Northwood” or “Developer”) is the owner and developer of certain real property located in Johnson County , Kansas and is desirous of placing certain restrictions on the real property described as follows:

NORTHWOOD TRAILS, a subdivision of land in the City of Olathe, Johnson County, Kansas according to the recorded plat thereof filed in the office of the Johnson County Register of Deeds as Document No. 1531724 in Book 59 at page 14.

WHEREAS, it is the desire and intent of Northwood to restrict the above-described real property to preserve and enhance the values of the development and improvements constructed thereon and to keep its use consistent with the intent of the developer;

NOW, THEREFORE, in consideration of the premises, Northwood, for it and its successors, transferees, grantees and assigns, does hereby subject the above-described property to the following restrictions :

1. Definitions.

- (a) “Lot” shall mean and refer to any separately numbered tract upon the recorded subdivision plat;
- (b) “Dwelling” or “unit” shall mean and refer to one enclosed living section of a building situated upon the property designed and intended for use and occupancy as a residence;
- (c) “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 in the subdivision;
- (d) “Developer” shall mean Northwood Development Company.

2. Residences.

The real estate above described shall be improved, used and occupied for private residential purposes only. Any dwelling unit erected or maintained on any of the lots hereby restricted shall be designated for occupancy by no more than one family, however, if so designated by the plat, the City of Olathe and Developer, a building may contain more than one dwelling. However, this restriction shall not prevent Developer or others authorized by it from erecting temporary buildings and using such temporary buildings or residences for an office, model, sales office or storage purposes during the period of development of said subdivision.

3. Architectural Review Committee.

There shall be an architectural review committee which shall consist of three (3) individuals, who may or may not reside in the subdivision. For two (2) years from and after the date this declaration is recorded in the office of the Register of Deeds of Johnson County , Kansas, the committee members shall be appointed by Developer. Each members term of appointment shall be as designated by developer, but shall not extend beyond such two (2) year period. In the case of death or resignation of any such committee member during such two year period, Developer shall appoint a successor who shall serve in lieu of such deceased or resigned committee member. After the expiration of such original two (2) year period, the committee members shall be appointed by the Board of Directors of the Home Owner’s Association for such terms as said Board deems appropriate. Committee members who have resigned or died shall be replaced by the Board. The members of the architectural review committee shall elect a chairman, whose name, address and telephone number shall be kept on file at Developer’s office or at the registered office of the Homes Association.

4. Plan Approval.

Wherever this declaration specifies that written approval or consent be obtained for any plans, structures, additions, changes or appurtenances to the land bound by this declaration, such written approval shall be obtained from the architectural review committee, signed by the chairman of such

committee, unless approval by Developer is specifically provided for in such provision. Plans shall be submitted to any committee member or to Developer for approval by the committee. The committee shall either approve or disapprove of any plans, structures, additions, changes or appurtenances within five (5) working days after submission of same. If no written response is made by the committee, either approving or disapproving, within such five (5) day period, the committee shall be deemed to have approved the matter submitted.

5. **Unsightly Projections.**
No air conditioning apparatus, television or radio antenna, satellite disc, solar panels, basketball goals or any unsightly projections shall be attached or affixed to the front of any dwelling. Any such projections to be attached to the sides or rear of any residence shall not be installed until receipt of prior written consent.
6. **Fences.**
No fence shall be erected without prior written consent. The maximum height of any fence shall be six feet, and the material shall be limited to wood, wrought iron or masonry. No other metal, chain link or other similar fences shall be permitted. No dog or animal pens or runs of any kind shall be permitted. Fences shall not be erected in the front or side yards of the dwellings and shall not be placed farther toward the front of the dwelling than a straight line extended from the rear building line of said dwelling. Any decorative or privacy fence for a side entrance or patio which extends forward of the rear building line shall not be constructed without prior written approval.
7. **Offensive Activities.**
No business and no noxious or offensive activities shall be carried on upon any lots, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighbors or neighborhood.
8. **Outbuildings.**
Except as herein provided, no structure of a temporary character, basement, tent, shack, garage, storage shed, or other outbuilding, other than the attached house itself, shall be erected on any tract, or used for residential purposes, either temporarily or permanently. Gazebos, cabanas and outside shelters for barbecue grills, as well as covered decks and patios, may be approved by written consent.
9. **Awnings, Deck or Patio Coverings, etc.**
Any window or door awnings, lattices of coverings, clothes lines, stove pipes, exhaust flues, chimneys or any other additions, modifications, alterations or improvements to the grounds or exterior portions of any dwelling shall be prohibited unless prior written consent is obtained.
10. **Animals.**
No animals, livestock or poultry of any kind shall be raised, bred or kept on any lots, except dogs, cats or other household pets, provided they are not kept, bred or maintained for any commercial purpose and do not constitute a nuisance to the neighbors or neighborhood. The Developer, and subsequently the Homes Association Board of Directors when formed, shall have the authority to determine what constitutes a nuisance. Upon such determination, such animal will be removed from the subject lot within three weeks of notification to the owner thereof of such determination or, in the event that a further determination is made that there is a potential for danger from the animal, then within 48 hours of such notification.
11. **Mailboxes.**
No mailbox or standard therefor shall be erected without the prior written approval of style, construction and location unless otherwise required by U.S. postal authorities.
12. **Lights.**
No lights or other illumination shall be higher than the dwelling on any lot covered by these restrictions without prior written consent.
13. **Exterior Basement Foundations and Walls.**
Exterior basement foundations and walls which are exposed in excess of eighteen inches (18") above final grade level at any point shall be painted and same color as the house, or covered with siding compatible in color and material with the structure.
14. **Easements.**

Developer reserves the right for itself and the Home Owners Association to construct pipelines, sewers, drains, gas, electricity and water lines upon, over and across all easements and rights-of-way shown on the recorded plat.

15. Landscaping and Sod.

All lawns shall be fully sodded prior to occupancy of the owner or shall be planted with zoysia strips no farther than twelve inches (12") apart, or zoysia plugs no farther than six inches (6") apart. Provided however, sodding may be eliminated or limited to an amount agreed upon between Owner and Developer. Each owner of a dwelling shall plant at least one tree within 8' of the curb on his side of the street, if no trees already exist between the house and the curb. On wooded lots, sod may be eliminated beyond a line 30 feet from the rear of the house. Owners shall attempt to preserve and retain the maximum number and amount of natural trees and vegetation on each lot to preserve the wooded character of the subdivision. However, any trees which might threaten a foundation or drainage system or might pose a safety hazard may be removed at the discretion of the building or owner. No tree may be removed which is over four inches (4") in trunk diameter, measured two feet (2') off the ground, unless expressly approved in writing by Developer.

16. Transported Structures.

No completed residential structure which has previously been at another location shall be moved onto any lot in this subdivision. No pre-fabricated, mobile home or "A" frame dwelling shall be occupied in any lot in this subdivision.

17. Enforcement.

Developer, the Home Owners Association or any owner of any tract or lot in said subdivision shall have the right to seek from any court or competent jurisdiction an injunction, mandatory or otherwise, to prevent a breach, or to enforce compliance with any of said restrictions, and may bring any other proper legal action at law or equity.

18. Unfinished Structure.

No building shall be permitted to stand with its exterior in an unfinished condition for longer than six months after commencement of construction. In the event of fire, windstorm or other damage, no building shall be permitted to remain in a damaged condition without commencement of repairs within three months. Further, the owner shall commence construction within 12 months after purchase of any lot. In the event of the failure of the owner/builder to comply with this section, the developer has the option to buy the lot, which option shall be exercised by written notice to the owner/builder, and within ten (10) days from the receipt of such notice said lot shall be conveyed to the developer for a sum equal to the purchase price of the lot together with the direct cost to the owner/builder of any partially completed improvements on the lot. The term "direct cost" shall be interpreted to include such items of direct cost for material and/or labor consumed upon the lot and other items incurred by the owner directly in connection with the construction or partial construction of such improvements but shall not be interpreted to include indirect costs such as overhead and other costs that are attributable to but not directly expend toward the construction. The reimbursement of such costs shall be in addition to the payment of the purchase price of the lot.

19. Required Building Materials and Colors.

Exterior walls of all buildings, structures and appurtenances thereto shall be of brick, stone, wood shingles, wood siding, wood paneling, plate glass, masonite, or a combination thereof. Manufactured stone and lava rock for exterior walls is prohibited. Windows, doors and louvers shall be of wood or colored metal and glass. Roofs shall be covered with wood shingles, wood shakes, clay tile or natural slate. Any building products which may come into general usage for dwelling construction in this area after the date of these restrictions shall be acceptable if approved in writing. All wood and masonite exteriors, except roofs and shakes sidewalks, shall be covered with a workmanlike finish of paint and/or stain, unless another finish is approved in writing.

20. Miscellaneous Restrictions.

- (a) Fuel storage tanks are prohibited.

- (b) Above ground swimming pools and above ground hot tubs are prohibited, unless completely screened in a manner approved in writing.
- (c) No automotive repair or rebuilding or any other form of automotive remodeling or refurbishing, whether for hire or otherwise, shall occur on any of the lots hereby restricted except a non-commercial basis and not for hire within the confines of any enclosed garage built on the said premises and as permitted under the other provisions in these restrictions.
- (d) No automobile, truck, motorcycle, motorbike, motor scooter, boat, airplane, house trailer, boat trailer, camping trailer, motor home, or vehicle of any other type or description may be stored upon any of the lots hereby restricted, except that such storage shall be permitted within the garage of any dwelling constructed on any of the lots hereby restricted. Nothing in this section, however, shall be construed to prohibit the regular parking of not more than three (3) automobiles in running condition and in a reasonable state of repair and preservation on any driveway permitted to be maintained on any of the lots hereby restricted. Vehicles restricted above may be stored on a lot established in the common area for this purpose subject to rules and regulations to be adopted by Developer and/or Homes Association.
- (e) Motorized vehicles shall not be operated on any vacant lot or common areas, except for mowing and other maintenance by employees or contractors of Developer or Homes Association.
- (f) Garage doors shall be kept closed except during normal use.
- (g) No motor vehicles shall be parked in the street for over a twenty-four (24) hour period.

21. Severability.

Unenforceability of any one of these covenants by judgment or court order shall in no way affect any of the other terms or provisions of these restrictions, which shall remain in full force and effect.

22. Duration.

The above covenants and restrictions shall continue and be in full force and effect until the 31st day of December, 2009, and shall automatically be continued thereafter for successive periods of 25 years such, provided, however, that the then owners of the fee simple title of a majority of the lots situated in said subdivision, may release the land or any part thereof from anyone or more of said restrictions, on December 31, 2008, or at any time thereafter, by executing and acknowledging an appropriate agreement in writing for such purpose, and filing same in the office of the Register of Deeds of Johnson County, Kansas.

23. Covenants Running with the Land.

The provisions of this Declaration of Restrictions shall be deemed to be covenants running with the land and shall be binding upon the above-named developer and all purchasers, successors, transferees, grantees and assigns claiming by, through, or under developer.

24. Homes Association.

A Homes Association shall be formed upon recordation with the Register of Deeds the Articles of Incorporation by the Developer creating such Homes Association. The Homes Association shall be known by the name of Northwood Trails Homes Association, Inc.

A. Membership in Association. Every owner of a lot which is subject to assessment shall be a member of the Association and the Association shall administer all common area. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

B. Voting Rights.

There shall be two classes of voting membership in the Association which rights shall be exercised as provided below.

Class A.

Class A members shall be all owners with the exception of Developer and such members shall be entitled to one vote for each dwelling owned. When more than one person owns an interest in any dwelling, all such persons shall be members; however, they shall all collectively exercise the one vote with respect to any dwelling.

Class B.

The sole Class B member shall be Developer and such member shall be entitled to two votes for each lot owned. The Class B membership shall cease and shall be converted to Class A membership when the total votes outstanding and the Class A membership equals the total votes outstanding in the Class B membership, which by virtue of the two to one ratio of votes between Class B and Class A will occur when sixty-six (66%) percent of the lots included within this declaration at that time have been sold by Developer; provided however, that if additional land is thereafter annexed into the Association and the subdivision so as to create an additional number of lots of such an amount that the proportion of lots sold is decreased below sixty-six (66%) percent, then and in that event the Class B membership shall automatically be recreated in the same manner and in the same condition as it originally existed.

C. Covenant and Lien for Assessments.

The developer for each lot owned within the subdivision and the Association hereby covenants and agrees to pay, and each owner of any lot be acceptance of a deed is deemed to covenant and agree to pay, to the Association;

- (1) Monthly assessments or charges;
- (2) Special assessments for capital improvements; and
- (3) Any other assessments for such expenses as are hereinafter created for by the Association or provided for in this declaration. All assessments shall be fixed, established and collected from time to time as hereinafter provided. Such assessments, together with the interest thereon, costs and reasonable attorney's fees involved in any collection thereof, shall be a charge and a continuing lien in favor of the Association upon the real estate or lot against which each such assessment is made. Such lien shall arise and run from the time at which by assessment remains unpaid for thirty (30) days after the same has become due and payable. Interest shall run on any unpaid assessment at the then current judgment rate as provided in the laws of the State of Kansas. The Association may bring an action at law against the owner personally obligate do pay some, for foreclose the lien against the property through proceedings in any court having jurisdiction of suits for the enforcement of such liens. Provided however, the lien for assessments provided herein shall be subordinate to the lien of any pre-existing first mortgage placed upon any property subject to assessment. Such liens may be recorded and shall run with the land and shall become due and payable in the event of transfer or refinancing of any lot subject to an assessment lien.

D. Use of Assessment Moneys.

Assessments levied by the Association shall be used to enhance the property and to promote the recreation, health, safety and welfare of the residents in the subdivision and owners of lots and for the improvement and maintenance of all common area.

E. Creation of Assessments.

The Board of Directors of the Association shall fix the monthly assessment per lot in accordance with the Articles of Incorporation to be subsequently filed with the Register of Deeds of Johnson County, Kansas. The maximum monthly assessment may be increased each year, after the first initial such assessment, by no more than fifteen (15%) percent above the maximum monthly assessment for such initial year or the previous year without any vote of the membership in the Association. A majority vote of the membership shall be required to increase any maximum monthly assessment by more than fifteen (15%) percent. Provided however, the Association may levy in any year a special assessment applicable to any year and future years for the purpose of defraying part or all of the expenses as to the cost of reconstruction, repair or replacement of capital improvements on the common area, and/or the construction of new capital improvements.

Such special assessments shall be levied only upon the vote of two-thirds (2/3) of the voting power of members present in person or by proxy at a meeting of the members called pursuant to the notice provisions contained in the Articles of Incorporation and any applicable Bylaws.

F. Rate of Assessment.

Both monthly assessments and special assessments must be fixed at a uniform rate for all similar lots, and monthly or less frequent due dates shall be established by the Board of Directors of the Association so as to provide for efficient collection of assessments. Provided however, nothing herein contained shall prevent the Board of Directors of the Association from assessing different sizes or types of lots with varying assessments and amounts thereof as long as all similar lots pay a uniform and equal rate. All assessments of owners, other than the Developer, shall commence on the 15th day of the month following such owner's acquisition of any lot within the subdivision or the Association.

G. Maintenance of Common Area.

The Association shall provide for the perpetual maintenance of all common areas, footpaths, jogging paths (and easements therefore), utilities, buildings and equipment thereon. Each owner shall be responsible for the maintenance of such owner's lot and any improvements thereon, provided however, the Association may, by vote of three-fourths of its members present at meeting in person or by proxy provide for the ground keeping of all owners' lots and to include the costs thereof as a part of the monthly assessments. Further, all owners or members who own similar lots may vote by the same majority to provide for such maintenance to assess such similar lots without the requirement of such grounds keeping on other, dissimilar lots in the Association, in which event, assessments for such grounds keeping shall apply only to such similar lots of the same category and not to other lots in the Association. In the event that the Association fails to adequately and properly maintain any common area, the City of Olathe, Kansas is hereby granted a perpetual easement in such event to enter upon the common area to maintain same.

H. Easements and right-of-way.

Developer, the Association and, as provided herein, the City of Olathe, shall have a right of access and an easement to, over and through all of the common are, dedicated easements and platted easements contained within the Association and the subdivision for all purposes which enable such parties to perform their obligations, rights and duties with regard to maintenance, repair, restoration and/or servicing of utilities for the common area in the subdivision.

I. Insurance.

The Board of Directors shall obtain and maintain, to the extent obtainable, fire and other hazard insurance of standard extended coverage, vandalism and malicious mischief endorsements, insuring all common area and improvements thereon, and public liability insurance in such limits as the Board of Directors may from time to time determine, covering the same common area and improvements with cross liability endorsement to cover the members and owners in the Association. The Board of Directors may also obtain such other insurance as it may determine from time to time to be necessary with all premiums for all policies purchased by the Association to be charged as a common expense over all property contained within the subdivision and to be paid from the assessments thereon.

J. Annexation of Additional Land.

Developer shall have the right to annex additional land into the subdivision and the Association, in which event the owners in such additional, annexed land shall have the same rights in the Association as are contained herein. Upon Annexation, the owners in such additional land shall have the same rights to the common areas in the Association and the same right of ingress and egress to the property as the original owners. Developer hereby covenants that annexation shall be mandatory of all land developed in accordance with the Planned Unit Development approved by City of Olathe of which the land initially bound hereby is a part. Said annexation to occur at the filing of each plat as subsequent phases are developed.

25. Notices. Any notice required to be sent to any owner under the provisions of this declaration shall be deemed to have been properly sent and received when mailed, postage prepaid to the Inc.

NORTHWOOD DEVELOPMENT COMPANY

BY: David K. Miller

David K. Miller, President of Dee-Kay Developers,

ATTEST:

David K. Miller

Secretary

Retyped from V 01. 2290 page 476 through page 492

May 13, 1996