

# COVENANTS

## Declaration Of Covenants, Easements, Charges And Liens

THIS DECLARATION, made this 26th day of March, 1974, by WICHITA LAND COMPANY, a Pennsylvania corporation (hereinafter referred to as "Developer"),

WHEREAS, Developer has heretofore acquired the fee simple interest in the following described land: all of COMOTARA First Addition to the City of Wichita, Sedgwick County, Kansas, except Lots A, B, C, D, E, F and Block D; said land in its entirety being hereinafter referred to as the "Property"; and

WHEREAS, Developer intends to develop a planned community on the land included in the Property, together with larger and adjacent parcels of land owned by Developer, affording well-planned residential, commercial, industrial, recreational, institutional and open-space uses, buildings, facilities and areas; and

WHEREAS, the First Phase of the planned community encompasses the Property and Developer intends to develop same under and in accordance with maps, plans, drawings and projections of the COMOTARA First Addition Community Unit Plan, heretofore approved by the Board of City Commissioners, Wichita, Kansas; and

WHEREAS, Developer desires to subject the Property (whether owned by it or hereafter owned by others) to the covenants, easements, assessment charges and liens imposed hereby in order (I) to provide funds for use as specified in Article IV C. hereof and (II) to grant rights, easements and privileges relating to the use of certain facilities, subject to the conditions set forth herein (all said covenants, conditions, restrictions, easements, assessment charges and liens imposed hereby being hereinafter referred to as the "COMOTARA Restrictions"); and

WHEREAS, there has been incorporated under the laws of the State of Kansas COMOTARA Homeowners Association, Inc. (hereinafter referred to as "COMOTARA") for the purposes of providing a non-profit corporation to serve as the representative of the Owners and Residents with respect to the assessment, collection and application of all charges imposed hereunder, the enforcement of all covenants contained herein and all liens created hereby, and the creation, operation, management and maintenance of the facilities and services referred to hereafter,

NOW, THEREFORE, in order to cause said covenants, conditions, restrictions, easements, assessment charges and liens to run with, burden and bind the property, Developer does hereby declare, fix and establish the covenants, conditions, restrictions, easements, assessment charges and liens set forth herein and does hereby subject all the Property, and such additions as may be made pursuant to Section 2.02 hereof, to said covenants, conditions, restrictions, easements, assessment charges and liens; and the same, and each of them, shall be bindings upon each and every successor, heir, administrator, executor, assignee and transferee; and the same, and each of same, is hereby imposed upon said Property and additions as may be made pursuant to Section 2.02 hereof as a servitude in favor thereof and interest therein as the dominant tenement or tenements.

## Article I

### Definitions

Section 1.01. "Architectural Committee" is defined in Section 7.01 hereof.

Section 1.02. "Assessable Property" shall mean and refer to the entire Property except such or parts thereof as may from time to time constitute "Exempt Property," as hereinafter defined.

Section 1.03. "Board" shall mean and refer to the Board of Directors of COMOTARA Homeowners Association, Inc.

Section 1.04. "Common Properties" shall mean and refer to those portions of the Property shown on the Plat of COMOTARA First Addition intended to be devoted to the common use and enjoyment of the Owners and residents of the Property upon conveyance thereof from the Developer to COMOTARA.

Section 1.05. "COMOTARA Charter" shall mean and refer to the Articles of Incorporation of COMOTARA Homeowners Association, Inc.

Section 1.06. "Declaration" shall mean and refer to this Declaration, as the same may from time to time be supplemented or amended in the manner provided herein.

Section 1.07. "Deed" shall mean and refer to a deed, assignment or other instrument conveying the fee simple in a "Lot" as hereinafter defined.

Section 1.08. "Development Period" shall mean and refer to the period commencing on the day that this Declaration is recorded in the office of the Register of Deeds of Sedgwick County, Kansas, and continuing until January 1, 1990.

Section 1.09. "Exempt Property" shall mean and refer to the following portions or parts of the Property: (I) all land and permanent improvements owned by the United States, the State of Kansas, Sedgwick County, the City of Wichita, or any instrumentality or agency of any such entity, for so long as any such entity or any such instrumentality or agency shall be the Owner thereof; (II) all common properties and permanent improvements owned by Developer of COMOTARA for so long as Developer or COMOTARA shall be the Owner thereof; and (III) all land and permanent improvements exempt from real property taxes by virtue of applicable law.

Section 1.10. "Lot" shall mean and refer to a portion of the assessable Property which is less than the whole thereof and which is shown on the Plat of COMOTARA First Addition and described by number or letter, with the exception of Common Properties heretofore defined.

Section 1.11. "Members" shall mean and refer to every person or entity who holds membership in COMOTARA Homeowners Association, Inc.

Section 1.12. "Mortgage" shall mean and refer to a mortgage, deed of trust or other security device and "mortgagee" shall mean and refer to the mortgagee, beneficiary, trustee or other holder of any of the foregoing instruments.

Section 1.13. "Notes" shall mean and refer to all notes, bonds, debentures or other evidences of indebtedness issued and sold by COMOTARA.

Section 1.14. "Note Holder" shall mean and refer to the holder of any note and all trustees or other representatives of one (1) or more such holders.

Section 1.15. "Owner" shall mean and refer to the Owner of any "Unit" within the Property, or any common or joint interest therein, if such Unit is owned by more than one (1) person or entity. "Unit" shall mean and include (I) the fee simple title to any lot within the Property; (II) the fee simple title to a Unit in any condominium development within the Property; and (III) any share, membership or other interest in any cooperative or other entity organized and operated for the purpose of making residential dwelling units available to its shareholders, members or other beneficiaries, which share, membership or other interest entitles the owner thereof to possession of any residential dwelling unit within the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 1.16. "Resident" shall mean and refer to (I) each tenant actually residing on (or conducting a business on) any part of the assessable Property and (II) members of the immediate family of each Owner and of each such tenant actually living in the same household with such Owner or such tenant. Subject to such rules and regulations as COMOTARA may hereafter specify, including the imposition of special fees for use if COMOTARA shall so direct, the term "resident" shall also include the employees, guests or invitees of any such Owner or tenant if the Board, in its absolute discretion, by resolution so directs.

Section 1.17. "Restrictions" shall mean and refer collectively to all covenants, conditions, restrictions, easements, assessment charges and liens created or imposed by this Declaration.

Section 1.18. "Structure" shall mean and refer to any thing or device (other than trees, shrubbery, hedges less than two (2) feet high, and landscaping) the placement of which upon any Lot may affect the appearance of such lot, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, clothes line, radio or television antenna, fence, curbing, paving, wall or hedge more than two (2) feet in height, signboard or any temporary or permanent improvement to such lot. "Structure" shall also mean (I) 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 (II) any change in the grade of any Lot of more than six (6) inches from that existing at the time of purchase by each Owner.

## Article II

### The Property Subject To This Declaration And Agreement; Annexation Of Additional Lands

Section 2.01. The Property is a portion of a larger area of land owned by Developer. Developer may from time to time cause separate and additional declarations and agreements to be filed subjecting other portions of the larger area of land owned by Developer to Restrictions similar to or different from those imposed upon the property by this Declaration. In addition, Developer may cause additional portions of such larger area of land to be subjected to the terms of this Declaration in the manner prescribed in Section 2.02 hereof. Each Owner by the act of becoming such shall be taken to have acknowledged and agreed (I) that the Property and such property as may be annexed pursuant to Section 2.02 hereof shall be the only property subject to the COMOTARA Restrictions, (II) that neither anything contained in this Declaration nor in any recorded or unrecorded plat, map, picture, drawing, brochure or other representation of a scheme of development, shall be construed as subjecting or requiring Developer, COMOTARA, or any successor assignee to or of any of the aforementioned, to subject to this Declaration or any other declaration or agreement any property or land now or hereafter owned by any of them, and (III) that the only manner in which any additional land can be subjected to this Declaration shall be by and in accordance with the procedure set forth in Section 2.02 hereof. The fact that terms or provisions set forth in separate or additional declarations and agreements relating to property or lands other than the Property may be similar or identical, in whole or in part, to the Restrictions set forth in this Declaration shall not be construed to mean that it was the intent or purpose therein to subject any additional property or lands to this Declaration or any terms or provisions thereof.

Section 2.02. Developer may, from time to time, annex additional lands to the Property, and thereby subject the same to the COMOTARA Restrictions, by the execution and filing for recordation with the Register of Deeds of Sedgwick County, Kansas, an instrument expressly stating an intention so to annex and describing such additional lands to be so annexed. During that twenty (20) year period commencing with the date of the recording of this Declaration, Developer may annex additional lands to the Property in its absolute discretion. From and after the termination of said twenty (20) year period, additional lands may be annexed to the Property provided that each such annexation is approved in writing by two-thirds (2/3) of the members of COMOTARA entitled to vote.

## Article III

### Membership; Voting Rights

Section 3.01. COMOTARA shall have as members only Owners. All Owners shall upon becoming such, be deemed automatically to have become members and there shall be no other qualification for membership. Membership shall be appurtenant to, and shall not be separated from the ownership of any of the interests described in Section 1.15 hereof.

Section 3.02 All members, so long as the same shall qualify under this Article III, shall be entitled to vote on each matter submitted to a vote at a meeting of members. Each member of the Association shall have one (1) vote, subject to the following exceptions and conditions:

- A. If any member owns or holds more than one (1) "Unit" (as defined in Section 1.15 hereof) such member, subject to the provisions of this Article III, shall be entitled to one (1) vote for each such Unit.
- B. When any such Unit or lease is owned or held by more than one (1) member as tenants in common or joint tenancy or any other manner of joint or common ownership or interest, such members shall collectively be entitled to only one (1) vote relative to such Unit or lease and if such members cannot jointly agree as to how that vote should be cast, no vote shall be allowed with respect to such Unit or lease.
- C. Any member who is in violation of the COMOTARA Restrictions, as determined by the Board, shall not be entitled to vote during any period in which such violation continues. Any member who fails to pay any dues or any special assessments established by COMOTARA shall not be entitled to vote during any period in which any such dues or assessments are due and unpaid.
- D. The Board may adopt such Bylaws, consistent with the terms of the COMOTARA Restrictions, the COMOTARA Charter, and the laws of the State of Kansas, as it deems advisable for any meeting of members in regard to proof of membership in COMOTARA, evidence of right to vote, the appointment and duties of inspectors of votes, registration of members for voting purposes, voting by proxy, and such other matters concerning the conduct of meetings and voting as it shall deem fit.

#### Article IV

##### A. Assessment Of Annual Charge

Section 4.01. For the purpose of providing funds for use as specified in Article IV C. hereof, the Board shall in each year, commencing with the year 1975, assess against the Assessable Property a charge (which shall be uniform with respect to all Assessable Property) not in excess of fifty cents (50¢) for each One Hundred Dollars (\$100) of the then current Fair Market Value, as hereinafter defined, of the Assessable Property. In making each such assessment, the Board shall separately assess each Lot based upon its Fair Market Value, and each such Lot shall be charged with the subject to a lien for the amount of such separate assessment which shall be deemed the "Annual Charge" with respect to such Lot.

Section 4.02. As used herein, the term Fair Market Value shall mean:

- (I) the highest valuation placed on land and permanent improvements in each year for Sedgwick County real estate tax purposes, as assessed or determined in such manner as may from time to time be provided by applicable law, regardless of any decrease of such valuation during such year by reason of protest, appeal or otherwise; and shall not be interpreted to mean the "assessed valuation" which is arrived at by applying a percentage reduction to the fair market value.

- (II) if Sedgwick County shall ever cease to impose real estate taxes, then said term shall mean in each year thereafter the highest valuation placed on land and permanent improvements during the last year when real estate taxes were imposed determined as provided in the immediately preceding subparagraph (I).

Section 4.03. As soon as may be practical in each year, COMOTARA shall send a written bill to each Owner stating (I) the Fair Market Value of each Lot owned by such Owner as the same appears on the appropriate public record; (II) the number of cents per One Hundred Dollars (\$100) of such Fair Market Value assessed by the Board as the Annual Charge for the year in question, (III) the amount of the Annual Charge assessed against each such Lot, stated in terms of the total sum due and owing as the Annual Charge, and (IV) that unless the Owner shall pay the Annual Charge within thirty (30) days following the date of receipt of the bill the same shall be deemed delinquent and will bear interest at the rate of eight percent (8%) per annum until paid.

Section 4.04. If the Owner of any Lot shall fail to pay the Annual Charge within ninety (90) days following receipt of the bill referred to in Section 4.03 hereof, in addition to the right to sue the Owner for a personal judgement, COMOTARA shall have the right to obtain a lien as provided by Section 4.07(II) and to enforce any lien that may be obtained in the same manner and to the same extent, including, but not limited to a foreclosure sale and deficiency decree, and as in the case of mortgages under applicable law, and the amount due by such Owner shall include the Annual Charge, as well as the cost of such proceedings, including a reasonable attorney's fee, and the aforesaid interest. If in any case the appropriate court refuses jurisdiction of the enforcement of said lien, then COMOTARA shall have the right to sell the property at public or private sale after giving notice to the Owner by registered mail or by publication in a newspaper of general circulation in Sedgwick County at least thirty (30) days prior to such sale.

Section 4.05. The Board shall have the right to adopt procedures for the purpose of making the assessments provided herein and the billing and collection of the Annual Charges, provided that the same are not inconsistent with the provisions hereof.

Section 4.06. Upon written demand by an Owner, COMOTARA shall within a reasonable period of time issue and furnish to such Owner a written certificate stating that all Annual Charges (including interest and costs, if any) have been paid with respect to any specified Lot as of the date of such certificate or, if all Annual Charges have not been paid, setting forth the amount of such Annual Charges (including interest and costs, if any) due and payable as of such date. COMOTARA may make a reasonable charge for the issuance of such certificates which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between COMOTARA and any bona fide purchaser of, or lender on, the Lot in question.

## B. Imposition Of Charge And Lien Upon Property

Section 4.07. The Developer for each Unit owned by it within the Property hereby covenants and each Owner of any Unit by acceptance of a deed or other indicia of ownership of a Unit, whether or not it shall be so expressed in any such deed or indicia of ownership, shall be deemed to covenant and agree:

- (I) that it will pay to COMOTARA the Annual Charge assessed by COMOTARA in each year against the Assessable Property; and
- (II) that if the Annual Charge is not paid within ninety (90) days following receipt of the bill referred to in Section 4.03 hereof, COMOTARA may obtain a lien against the assessable property upon which the Annual Charge is not paid in the following manner. COMOTARA may file for recording an Affidavit of Nonpayment of Annual Charge in the office of the Register of Deeds of Sedgwick County, Kansas, stating in said Affidavit (a) the legal description of the Property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property, (c) the amount of the Annual Charge which is unpaid, and (d) there shall be attached to said Affidavit a copy of the bill referred to in Section 4.03 hereof. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the property whether arising from or imposed by judgment or decree or by an agreement, contract, mortgage or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.
- (III) in the event a lien is obtained pursuant to Section 4.07(II) and thereafter the Annual Charge shall be fully paid, COMOTARA shall within ten (10) days following such payment file with the Register of Deeds of Sedgwick County, Kansas, an Affidavit of Payment of Delinquent Charges which Affidavit shall (a) refer to and identify the Affidavit of Non-payment of Annual Charge which created the lien which has been satisfied, (b) state the legal description of the property affected, and (c) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Delinquent Annual Charges as provided for in this Section 4.07(III) shall fully and completely release the lien(s) referred to in said Affidavit of Payment of Delinquent Annual Charges shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged. The fact that no Affidavit of Nonpayment of Annual Charge has been filed and recorded with respect to any Assessable Property as provided for in Section 4.07(II) hereof shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the property is free and clear of any liens as may be created by virtue of Section 4.07(II) hereof.

Section 4.08. In addition to the covenants and agreements heretofore set forth in Section 4.07 each Owner of each Lot by the acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to have agreed to be personally liable for the payment of each Annual Charge assessed by COMOTARA against such Lot in each year during any part of which such Owner holds title to such Lot.

Section 4.09. As used in this Article IV the term "Annual Charge" shall mean the total of the following:

- (I) the Annual Charge as assessed pursuant to Section 4.01 hereof;
- (II) the interest on delinquent charges imposed by Section 4.03 hereof; and
- (III) the cost of enforcing the lien as provided in Section 4.04 hereof.

Section 4.10. Nothing contained in this Article IV shall prevent any Owner, subject to the provisions of Article VII, from changing, altering or destroying any permanent improvement owned by him if the Annual Charge imposed hereunder with respect thereto (I) has been paid for the year in which such change, alteration or destruction takes place or (II) the Annual Charge with respect to the permanent improvement in question has been paid for the year preceding such change, alteration or destruction and a bill for the Annual Charge for the then current year has not been sent by COMOTARA under Section 4.03 hereof prior to such change, alteration or destruction.

## C. Use Of Funds

Section 4.11. COMOTARA shall apply all funds received by it pursuant to these Restrictions, and all other funds and property received by it from any source, including the proceeds of the loans referred to in Section 4.12 and the surplus funds referred to in Section 4.13, to the following, pro tanto and in order stated:

- (I) the payment of all principal and interest, when due, on all loans borrowed by COMOTARA to the extent required under any agreement with Note Holders referred to in Section 4.12 hereof; and
- (II) the costs and expenses of COMOTARA; and
- (III) for the benefit of the Property, Owners and residents by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation and subsidizing of any or all projects, services, facilities, studies, programs, systems and properties relating to: parks, recreational facilities or services; drainage systems; streets, roads, walkways, curbing, gutters, sidewalks, trees, flowers and landscaping, fountains, benches, shelters, directional and informational signs, walkways, and bridges, and street, road and highway lighting facilities; lakes, dams, parks, swimming pools, tennis courts, playgrounds, boat basins and marinas, and other related or unrelated recreational facilities; and any and all other improvements, facilities and services that the Board shall find to be necessary, desirable or beneficial to the interest of the Property, Owners and residents.

Section 4.12. In order to secure the repayment of any and all sums borrowed by it from time to time, COMOTARA is hereby granted the right and power:

- (I) to assign and pledge all revenues received, and to be received, by it under any provision of this Declaration, including, but not limited to, the proceeds of the Annual Charges payable hereunder;
- (II) to enter into agreements with Note Holders with respect to the collection and disbursements of funds, including, but not limited to agreements wherein COMOTARA covenants:
  - (a) to assess the Annual Charges on a given day in each year and, subject to the limitation on amount specified in Section 4.01 hereunder, to assess the same at a particular rate or rates;
  - (b) to establish sinking funds and/or other security deposits;
  - (c) to apply all funds received by COMOTARA first to the payment of all principal and interest on such loans, or to apply the same to such purpose after providing for costs of collection;
  - (d) to establish such policies of collection of indebtedness owed COMOTARA and invocation of lien enforcement procedures pursuant to Section 4.04 and 4.07 as may be required by the Note Holder;
  - (e) to provide for the custody and safeguarding of all funds received by COMOTARA.

The amount, terms, rate or rates of all borrowing and the provisions of all agreements with Note Holders shall be subject solely to the decision of the Board acting in its absolute discretion.

Section 4.13. COMOTARA shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges, or otherwise, and may carry forward, as surplus, any balances remaining; nor shall COMOTARA be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of COMOTARA and the effectuation of its purposes.

Section 4.14. COMOTARA shall be entitled to contract with any corporation, firm or other entity for the performance of the various duties imposed on COMOTARA by this Declaration and the performance by any such entity shall be deemed the performance of COMOTARA hereunder.

## Article V

### Property Rights

Section 5.01. All Members and Residents shall have a right and easement of enjoyment in and to Common Properties, from and after the conveyance thereof by Developer to COMOTARA as provided in Section 5.03 hereof, and such easement shall be appurtenant to and shall pass with any of the interests described in Section 1.15 hereof. All such rights and easements are subject to the right of COMOTARA in accordance with the COMOTARA Charter and Bylaws:

- (I) to limit the number of guests of Members and Residents in or upon any Common Properties or any facilities located thereon;
- (II) to charge reasonable admission and other fees for the use of any recreational facilities situated upon Common Properties;
- (III) to borrow money for the purpose of improving Common Properties and in aid thereof to mortgage Common Properties;
- (IV) to suspend the voting rights and the right to use any such recreational facilities by a Member for any period during which any dues or any assessments remain unpaid or during which a violation of the COMOTARA Restrictions exists; and, for a period not to exceed thirty (30) days, for any infraction of rules and regulations adopted and promulgated by COMOTARA;
- (V) to grant easements or rights-of-way to any public utility corporation or public agency on Common Properties; and
- (VI) to dedicate or transfer all or any part of the Common Properties to any public agency or authority for such purposes and subject to such conditions as may be agreed to by COMOTARA and such transferee. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes has been properly filed among the records of COMOTARA, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance of the meeting at which such instrument is first presented for signature.

Section 5.02. A Member's right of enjoyment in Common Properties shall automatically extend to all members of his immediate family residing on any part of the Property. No guests shall be entitled to exercise such right of enjoyment or to any use of Common Properties except as provided in, and subject to, such regulations as may be promulgated by the Board.

Section 5.03. The Developer may retain the title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Developer, COMOTARA is able to maintain the same but, notwithstanding anything herein, the Developer hereby covenants for itself, its successors and assigns, that it shall convey the Common Properties to COMOTARA not later than January 1, 1989.

## Article VI

### Covenants For Maintenance

Section 6.01. Each Owner (other than the Developer) shall keep all Lots owned by him, and all improvements therein or thereon, in good order and repair, including but not limited to the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If in the opinion of the Architectural Committee, as hereinafter defined, any Owner fails to perform the duties imposed by the preceding sentence, COMOTARA, after approval by a two-thirds (2/3) decision of the Board, and after fifteen (15) days' written notice to Owner to remedy the condition in question, shall have the right, through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot or such improvements and the cost thereof shall be a binding personal obligation of such Owner and the cost may mature into a lien enforceable in the same manner as a mortgage upon the Lot(s) in question in the following manner: COMOTARA may file for recording an Affidavit of Nonpayment of Maintenance Charge in the office of the Register of Deeds of Sedgwick County, Kansas stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property, and (c) the amount of the Maintenance Charge which is unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the property whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

Section 6.02. In the event a lien is obtained pursuant to Section 6.01 and thereafter the Maintenance Charge plus interest at the rate of eight percent (8%) per annum shall be fully paid, COMOTARA shall within ten (10) days following payment file with the Register of Deeds of Sedgwick County, Kansas an Affidavit of Payment of Maintenance Charges which Affidavit shall (a) refer to and identify the Affidavit of Nonpayment of Maintenance Charge which created the lien which has been satisfied, (b) state the legal description of the property affected, (c) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Maintenance Charges shall fully and completely release the lien referred to in said Affidavit and said Affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged.

Section 6.03. In the event of any transfer, sale or assignment of any Lot or Lots to a bona fide purchaser, and in the event that no Affidavit of Nonpayment of Maintenance Charge has been recorded as provided in Section 6.01 prior to such transfer, sale or assignment, any such Affidavit filed subsequent to the above referenced transfer, sale or assignment shall be invalid and unenforceable.

Section 6.04. In the event that COMOTARA, its successors or assigns, shall fail at any time to maintain the Common Properties or fail in any manner to fulfill its obligations relating to the Common Properties, the City of Wichita may serve a written Notice of Delinquency upon COMOTARA setting forth the manner in which COMOTARA has failed to fulfill its obligations. Such Notice shall include a statement describing the obligation that has not been fulfilled and shall grant twenty (20) days within which COMOTARA may fulfill the obligation. If said obligation is not fulfilled within the time specified, the City of Wichita, in order to preserve the taxable values of the properties within the Community Unit Plan and to prevent the Common Properties from becoming a nuisance, may enter upon said Common Properties and perform the obligations listed in the Notice of Deficiency. All costs incurred by the City of Wichita in carrying out the obligations of COMOTARA may be assessed against the Common Properties in the same manner as provided by law for such assessments and said assessments may be established as liens upon said Common Properties. Should COMOTARA, its successors or assigns, upon receipt of said Notice of Deficiency, feel that the obligations listed in said Notice are not proper for any reason, it may, within the twenty (20) day period provided in such Notice, apply for a hearing before the Board of City Commissioners to appeal said notice and any further proceedings under the Notice shall be delayed pending the outcome of any proceedings on appeal of said Notice.

## Article VII

### Architectural Committee; Architectural Control

Section 7.01. The "Architectural Committee" shall be composed of those three (3) or more individuals so designated from time to time by the Board of Directors of COMOTARA.

Section 7.02. No Structure shall be commenced, erected, placed, moved on to or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any manner which materially changes the exterior appearance thereof, nor shall any new use by commenced on any Lot, unless plans and specifications (including a description of any proposed new use) therefor shall have been submitted to and approved in writing by the Architectural Committee. Such plans and specifications shall be in such form and shall contain such information as may be required by the Architectural Committee, but in any event shall include (I) a site plan of the Lot or Lots showing the nature, exterior color scheme, kind, shape, height, materials and location with respect to the particular Lot or Lots (including proposed front, rear and side set-backs) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Lot or Lots; and (II) a grading plan for the particular Lot or Lots.

Section 7.03. The Architectural Committee shall have the right to disapprove any plans and specifications submitted hereunder because of any of the following:

- (a) the failure of such plans or specifications to comply with any of the COMOTARA Restrictions;
- (b) failure to include information in such plans and specifications as may have been reasonably requested;

- (c) objection to the exterior design, appearance or materials of any proposed Structure;
- (d) incompatibility of any proposed Structure or use with existing Structure or uses upon other Lots in the vicinity;
- (e) objection to the location of any proposed Structure upon any Lot or with reference to other Lots in the vicinity;
- (f) objection to the grading plan for any Lot;
- (g) objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any proposed Structure;
- (h) objection to parking areas proposed for any Lot on the ground of (1) incompatibility to proposed uses and Structures on such Lot or (2) the insufficiency of the size of parking areas in relation to the proposed use of the Lot; or
- (i) any other matter which, in the judgment of the Architectural Committee, would render the proposed Structure, Structures or uses inharmonious with the general plan of improvement of the Property or with Structures or uses located upon the Lots in the vicinity.

In any case where the Architectural Committee shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the Architectural Committee shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

Section 7.04. Upon approval by the Architectural Committee of any plans and specifications submitted hereunder, a copy of such plans and specifications, as approved, shall be deposited or permanent record with the Architectural Committee, and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same.

Section 7.05. The Architectural Committee may promulgate rules governing the form and content of plans to be submitted for approval or requiring specific improvements on Lots, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the Architectural Committee at any time, and no inclusion in, omission from, or amendment of any such rules or statement shall be deemed to bind the Architectural Committee to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the Architectural Committee's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Lot of any plans or specifications shall not be deemed a waiver of the Architectural Committee's right, in its discretion, to disapprove such plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use on any other Lot or

Lots. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided, (I) that the Structures or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained on the COMOTARA Restrictions, and (II) that the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Lot in question.

In the event that the Architectural Committee fails to approve or disapprove any plans and specifications as herein provided within thirty(30) days after submission thereof, the same shall be deemed to have been approved, as submitted, and no further action shall be required.

Section 7.06. If any Structure shall be altered, erected, placed or maintained upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with plans and specifications approved by the Architectural Committee pursuant to the provisions of this Article VII, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article VII and without the approval required herein, and, upon written notice from the Architectural Committee, any such Structure so altered, erected, placed or maintained upon any Lot in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

If fifteen (15) days after the notice of such a violation the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, COMOTARA shall have the right, through its agents and employees, to enter upon such Lot and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such Owner and the cost may mature into a lien (enforceable in the same manner as a mortgage) upon the Lot(s) in question in the following manner: COMOTARA may file for recording an Affidavit of Nonpayment of Removal or Alteration Charges in the office of the Register of Deeds of Sedgwick County, Kansas stating (a) the legal description of the property upon which the lien is claimed, (b) the name(s) of the Owner(s) of said property and (c) the amount of the Removal or Alteration Charges which are unpaid. The lien shall be created at the time of the filing and recording of the Affidavit and such lien shall be superior to all other charges, liens or encumbrances which may thereafter in any manner arise or be imposed upon the property whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, or other instrument, saving and excepting only such liens for taxes or other public charges as are by applicable law made superior.

In the event a lien is obtained pursuant to this Section 7.06 and thereafter the Removal or Alteration Charges plus interest at the rate of eight percent (8%) per annum shall be fully paid, COMOTARA shall within ten (10) days following payment file with the Register of Deeds of Sedgwick County, Kansas an Affidavit of Payment of Removal or Alteration Charges which Affidavit shall (a) refer to and identify the Affidavit of Nonpayment of Removal or Alteration Charges which created the lien which has been satisfied, (b) state the legal description of the property affected and (c) state the name(s) of the Owner(s) of the property. The recording of the Affidavit of Payment of Removal or Alteration Charges shall fully and completely release the lien referred to in said Affidavit and said Affidavit shall be conclusive evidence to any purchaser or encumbrancer or as to any title insurer or title examiner that the pre-existing lien has been fully and completely released and discharged.

In the event of any transfer, sale or assignment of any Lot or Lots to a bona fide purchaser, and in the event that no Affidavit of Nonpayment of Removal or Alteration Charges has been recorded as provided in this Section 7.06 prior to such transfer, sale or assignment, any such Affidavit filed subsequent to the above-referenced transfer, sale or assignment shall be invalid and unenforceable.

Section 7.07. Upon completion of the construction or alteration of any Structure in accordance with plans and specifications approved by the Architectural Committee, the Architectural Committee shall, upon written request of the Owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such Structure and the Lot on which such Structure is placed, and stating that the plans and specifications, the location of such Structure and the use or uses to be conducted thereon have been approved and that such Structure complies therewith. Preparation and recording of such Certificate shall be at the expense of such Owner. Any Certificate of Compliance issued in accordance with the Provisions of this Section 7.07 shall be prima facie evidence of the facts therein stated and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer or title examiner, such Certificate shall be conclusive evidence that all Structures on the Lot, and the use or uses described therein comply with all the requirements of this Article VII, and with all other requirements of this Declaration as to which the Architectural Committee exercises any discretionary or interpretive powers.

Section 7.08. Any agent of Developer, COMOTARA or the Architectural Committee may at any reasonable time or times enter upon and inspect any Lot and any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and neither Developer, COMOTARA nor the Architectural Committee nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

## Article VIII

### General Covenants And Restrictions

Section 8.01. Without the prior written approval of the Architectural Committee:

- (I) No previously approved Structure shall be used for any purpose other than that for which it was originally designed;
- (II) No Lot shall be split, divided, or subdivided for sale, resale, gift, transfer or otherwise;
- (III) No facilities, including poles and wires, for the transmission of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be maintained;
- (IV) No boat, boat trailer, house trailer, camper, camper trailers or any similar items shall be stored in the open on any Lot; and
- (V) No fence will be erected on any Lot.

Section 8.02. No tree having a diameter of six (6) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of COMOTARA or the Architectural Committee. COMOTARA or the Architectural Committee in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. COMOTARA or the Architectural Committee may designate certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 8.02, COMOTARA or the Architectural Committee and the respective agents of each may come upon any Lot during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither COMOTARA nor the Architectural Committee, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Section 8.03. No birds, animals or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Property without the express written consent of the Architectural Committee. The Architectural Committee may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot.

Section 8.04. No sign or other advertising device of any nature shall be placed upon any Lot except as provided herein. The Architectural Committee may, in its discretion, adopt and promulgate rules and regulations relating to signs which may be employed.

Section 8.05. No temporary building, trailer, garage, basement, tent, outbuilding or building in the course of construction shall be used temporarily or permanently as a residence on any Lot.



Section 8.06. No lumber, metals, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on any Lot or on any of the Common Properties, except building materials may be stored on a lot during the course of construction of any approved Structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot so as to provide access to persons making such pick-up. At all other times such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on the Property.

Section 8.07. 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 and movable pipes used for irrigation purposes. No Lot shall be used for the purpose of boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, gravel or earth.

Section 8.08. COMOTARA shall have the right to enter upon any Lot and trim or prune, at the expense of the Owner, any hedge or other planting which in the opinion of the Architectural Committee or COMOTARA, by reason of its location upon the Lot or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given fifteen (15) days prior written notice of such action.

Section 8.09. No motor vehicles of any type other than maintenance vehicles shall be operated on any of the Common Properties or the sidewalks and bicycle paths located in the Common Properties.

Section 8.10. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street lines extended past the corner. The same sight line restrictions shall apply to any Lot within ten (ten) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at a sufficient height to avoid obstruction of such sight lines.

Section 8.11. No noxious, dangerous or offensive activity or thing shall be carried on or permitted, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

## Article IX

### Zoning And Specific Restrictions

Section 9.01. The COMOTARA Restrictions shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the COMOTARA Restrictions shall be taken to govern and control.

## Article X

### Residential Protective Covenants and Restrictions

Section 10.01. The provisions of this Article X shall relate solely to Lots zoned for residential purposes.

Section 10.02. No profession or home industry shall be conducted in or on any part of a Lot or in any improvements thereon on the Property without the specific written approval of the Architectural Committee. The Architectural Committee, in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Lot or any improvement thereon to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry shall be permitted, however, unless it is considered, by the Architectural Committee, to be compatible with a high quality residential neighborhood. The following activities, without limitation, may be permitted by the Architectural Committee in its discretion: music, art and dancing classes and seamstress services.

Section 10.03. All else herein notwithstanding, with the written approval of the Architectural Committee, any Lot may be used for a model home or for a real estate office during the development period.

Section 10.04. No clothing or any other household fabric shall be hung in the open on any Lot unless the same are hung from an umbrella or retractable clothes hanging device which is removed from view when not in use or unless the same is enclosed by a fence or other enclosure at least six (6) inches higher than such hanging articles, provided such fence or other enclosure is approved by the Architectural Committee. No machinery shall be placed or operated upon any Lot except such machinery as is usual in maintenance of a private residence.

Section 10.05. Notwithstanding any other provisions herein, the Architectural Committee may authorize any Owner with respect to his Lot to:

- (I) temporarily use a single-family dwelling house for more than one (1) family;
- (II) locate structures other than the principal dwelling house within set-back areas; or
- (III) use Structures other than the principal dwelling house for residence purposes on a temporary basis.

Section 10.06. As soon as practicable after completion of a residence on a Lot, the Owner thereof shall plant a lawn and at least fifteen (15) perennial shrubs, bushes, or trees on such Lot

## Article XI

### Waterfront Areas And Waterways

Section 11.01. Any Lot which shall abut upon any lake, stream, or other waterway (hereinafter collectively referred to as Waterways) shall be subject to the following additional restrictions:

- (I) No wharf, pier, bulkhead, or other structure or obstruction shall be built or maintained upon any waterfront site or into or upon any Waterway on the Property or adjacent thereto except with the specific written approval of the Architectural Committee. In no event shall any such structure or obstruction be permitted if it is deemed to offer any threat whatsoever to save navigation upon such Waterway as a recreation facility.
- (II) No boat canal shall be constructed upon any Lot nor shall any facility or device be constructed or installed upon any Lot which shall in any way alter the course of or natural boundaries of any Waterway or which shall involve or result in the removal of water from any Waterway except with the specific written approval of the Architectural Committee.
- (III) No boats, boat railways, hoists, launching facilities or any similar type of structures or equipment shall be installed, constructed or maintained upon any Lot, nor shall any boat or boat trailer be stored on any Lot in such manner as to be visible from surrounding properties or from the abutting Waterway.

Section 11.02. No boat of any kind shall be operated upon any Waterway on the Property without the prior written approval of the Architectural Committee, and even if such approval is granted, such operation shall conform to all rules and regulations promulgated concerning the use of boats.

Section 11.03. No garbage, trash or other refuse shall be dumped into any Waterway on the Property.

## Article XII

### Duration and Amendment

Section 12.01. The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by Developer, COMOTARA and the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2005, after which time said Restrictions shall be automatically extended for successive periods of ten (10) years. This Declaration may not be amended in any respect (except with regard to the annexation of additional properties as set forth in Section 2.02 hereof) except by the execution of an instrument signed by not less than eighty percent (80%) of the Lot Owners, which instrument shall be filed for recording with the Register of Deeds of Sedgwick County, Kansas, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2005, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than sixty-seven percent (67%) of the Lot Owners, which instrument shall be filed for recording with the Register of Deeds of Sedgwick County, Kansas, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

## Article XIII

### General

Section 13.01. Violation or breach of any Restriction herein contained shall give Developer or COMOTARA, their respective legal representative successors and assigns, in addition to all other remedies, the right to enter upon the land or as to which such violation or breach exists, and summarily to abate and remove, at the expense of the Owner thereof, any erection, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof; and the said parties shall not thereby be deemed to affect or limit the rights of the Owners or the Lots within the Property to enforce the COMOTARA Restrictions by appropriate judicial proceedings.

Section 13.02. The failure of Developer, COMOTARA or the Owner of any Lot included in the Property, their respective legal representatives, heirs, successors and assigns, to enforce any Restriction herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach as to such a violation or breach occurring prior or subsequent thereto.

Section 13.03. No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 13.04. The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

Section 13.05. Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity.

Section 13.06. Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against a Lot Owner may be awarded a reasonable attorneys' fee against such Lot Owner.

Section 13.07. COMOTARA and the Architectural Committee to the extent specifically provided herein may adopt and promulgate reasonable rules and regulations regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting and promulgating such rules and regulations, and in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, COMOTARA and the Architectural Committee shall take into consideration the best interests of the Owners and tenants and of the Property to the end that the Property shall be preserved and maintained as a high quality community.

In granting any permit, authorization, or approval, as herein provided, COMOTARA and the Architectural Committee may impose any conditions or limitations thereon as they shall deem advisable under the circumstances in each case in light of the considerations set forth in the immediately preceding paragraph hereof.

Section 13.08. The headings of the Articles herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

Section 13.09. No violation of any of these COMOTARA Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagee's or foreclosure sale shall be bound by and subject to these COMOTARA Restrictions as fully as any other Owner of any portion of the Property.

Section 13.10. Each grantee accepting a deed, lease or other instrument conveying any interest in any Lot, whether or not the same incorporates or refers to these COMOTARA Restrictions, covenants for himself, his heirs, successors and assigns, to observe, perform and be bound by these COMOTARA Restrictions and to incorporate the same by reference in any deed or other conveyance of all or any portion of his interest in any real property subject hereto.

Section 13.11. Developer shall be empowered to assign its rights hereunder to any successor corporation (hereinafter referred to as the "Successor Corporation") and upon such assignment, the Successor Corporation shall have all the rights and be subject to all the duties of Developer hereunder and shall be deemed to have agreed to be bound by all provisions hereof, to the same extent as if the Successor Corporation had been an original party instead of Developer, and all references herein to Developer shall refer to such Successor Corporation. Any such assignment shall be accepted by the Successor Corporation under a written agreement pursuant to which the Successor Corporation expressly assumes all duties and obligations of Developer. If for any reason Developer shall cease to exist without having first assigned its right hereunder to a Successor Corporation, the covenants, easements, charges and liens imposed hereunder shall nevertheless continue, and any Owner may petition a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a Successor Corporation and assigning the rights of Developer hereunder the same force and effect, and subject to the same conditions, as provided in this Section 13.11 with respect to an assignment and delegation by Developer to a Successor Corporation.

WITNESS the due execution hereof as of the date first above written.

**WICHITA LAND COMPANY**

By /s/ J. Thomas Cushman  
President

Filed for record April 26, 1974  
State of Kansas  
Sedgwick County  
Book 98 Pages 1391 through 1413.

Attest: /s/ David Acton, Secretary

STATE OF PENNSYLVANIA )  
 ) ss:  
COUNTY OF MONTGOMERY )

BE IT REMEMBERED, that on this 26th day of March, 1974, before me, the undersigned, a Notary Public duly commissioned in and for the County and State aforesaid, came J. Thomas Cushman, and David Acton, who are each personally known to me and known to me to be the President and Secretary, respectively, of Wichita Land Company, and to be the same persons who executed the above and foregoing instrument, and they each duly acknowledged the execution of same for and on behalf of and as the free and voluntary act and deed of said corporation, for the uses and purposes herein set forth.

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

My Commission Expires: /s/ Eileen M. Blaker  
January 27, 1975 Notary Public

**CONSENT OF MORTGAGE HOLDER**

The undersigned, FIRST NATIONAL CITY BANK, with offices at 399 Park Avenue, New York, New York, being the holder of certain mortgages encumbering the real property described in the above and foregoing Declaration of Covenants, Easements, Charges and Liens, does hereby consent to the revocation of the Declaration of Covenants, Easements, Charges and Liens recorded February 22, 1973, in the office of the Register of Deeds, Sedgwick County, Kansas, in Book 49 at page 206, and does hereby further consent to the imposition of the above and foregoing Declaration of Covenants, Easements, Charges and Liens on said real property and to the recording of same in the Office of the Register of Deeds, Sedgwick County, Kansas.

April 24, 1974 FIRST NATIONAL CITY BANK  
By /s/ Dean B. Seltzer  
Vice President

Attest: /s/ John A. Marr, A.O.

STATE OF NEW YORK )  
 ) ss:  
COUNTY OF )

BE IT REMEMBERED, that on this 24th day of April, 1974, before me, the undersigned, a Notary Public duly commissioned in and for the County and State aforesaid, came Dean B. Seltzer, Vice President, and John A. Marr, Account Officer, who are each personally known to me and known to me to be the Vice President and Cashier, respectively, of First National City Bank, and to be the same persons who executed the above and foregoing instrument, and they each duly acknowledged the execution of same for and on behalf of and as the free and voluntary act and deed of said First National City Bank, for the uses and purposes herein set forth.

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

My Commission Expires: /s/ Lawrence Lasco  
March 30, 1975 Notary Public