

This instrument filed by  
Security Land Title Company  
*acc*

2260423

STATE OF KANSAS } ss  
COUNTY OF JOHNSON }  
FILED FOR RECORD

HOMES ASSOCIATION DECLARATION

1993 JUN 16 P 1:03.9

PARKSIDE OF WELLINGTON PARK, 1ST PLAT

SARA F. ULLMANN  
REGISTER OF DEEDS

37.00

THIS HOMES ASSOCIATION DECLARATION, made as of this 15 day of JUNE, 1993 by the undersigned, Wellington Park Partners, a Kansas general partnership.

WHEREAS, Wellington Park Partners, a Kansas general partnership ("Developer"), is the owner of the real property described on Exhibit "A" attached hereto, platted as "Parkside of Wellington Park, 1st Plat", and has filed that certain Declaration of Restrictions for "Parkside of Wellington Park, 1st Plat" in the Office of the Register of Deeds of Johnson County, Kansas at Volume 83, at Page 27 on March 17, 1993; and

WHEREAS, the Developer is now developing portions of the above-described land and Developer desires to create and maintain a residential neighborhood possession features of more than ordinary value to the said community; and

NOW, THEREFORE, in order to assist it and its grantees in providing the means necessary to bring about the development of the above-described land, the Developer does now and hereby subjects all of the land described on Exhibit "A" attached hereto to the covenants, charges and assessments set forth and contained in this Declaration, subject, however, to the limitations hereinafter specified.

DEFINITIONS OF TERMS USED.

The term "District" as used in this Declaration shall mean all of the real property described on Exhibit "A" attached hereto (referred to as "Parkside of Wellington Park") and such additional lands as may be added to the District as set forth below. The term "Lot", as used herein, shall mean any numbered lot as platted, which may consist of one or more numbered lots or part or parts of one or more numbered lots, as platted, upon which a residence may be erected in accordance with the "Restrictions" hereinafter defined. The term "Association" shall mean and refer to the Wellington Park Homes Association. The term "Public Place" as used

herein shall be deemed to mean all streets, and similar places the use of which is expressly dedicated to or set aside for the use of the general place on said plat. The term "Common Areas" as used herein shall be deemed to mean any tract, designated as such on said plat, located within the District as it exists from time to time, which tracts shall be owned, managed and maintained by the Wellington Park Homes Association for the use, benefit and enjoyment of the present and future owners of land within the District. The term "Owners" as used herein shall mean those persons or corporations who may from time to time own land within the District. The term "Restrictions" as used herein shall specifically include those contained in the "Declaration of Restrictions" of PARKSIDE OF WELLINGTON PARK, 1ST PLAT filed in the office of the Register of Deeds, Johnson County, Kansas, on Mar. 17, 1993, beginning at Page 27 of Volume 83, and all amendments thereto.

#### SECTION 1. MEMBERSHIP IN ASSOCIATION

The Owners of all of the land hereinabove described, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be the members of an association, which has heretofore been established and known as the "WELLINGTON PARK HOMES ASSOCIATION." The Association has been heretofore or will be incorporated under the laws of the State of Kansas as a corporation not for profit. Membership in the Association shall be limited to the Developer and Owners of land within the boundaries of the District as it exists from time to time, as hereinafter set forth.

#### SECTION 2. VOTING RIGHTS

The Wellington Park Homes Association shall have two (2) classes of voting membership, as follows:

Class A. Each Owner of a Lot in Wellington Park shall be a Class A member. Each Class A member shall be entitled to one vote for each Lot owned by him, her or it in fee simple title. Provided, however, that until a residence is completed and occupied

in good faith on a lot, the Developer shall be entitled to the vote of the lot owner, and purchase of a lot subject to this Declaration shall constitute the purchaser's proxy to Developer for the aforesaid purpose. When more than one person holds such interest in any Lot, all such persons shall be members and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

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

(1) The voting rights of a Class A member shall be suspended for any period during which any assessment described herein, including interest and fees, remains unpaid.

(2) The Association, upon approval of its Board of Directors, shall have the right to charge reasonable fees and determine the rules for the use of any recreational facility, including one or more swimming pools, located within a Common Area.

(3) At any regular or special meeting of the Association, members may cast their vote in person or by proxy.

(4) Except as hereinbefore provided, the Association shall be the sole judge of the qualification of its members and of their rights to participate in its meetings and proceedings.

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

### SECTION 3. LAND ENTITLED TO BENEFITS

No land shall be entitled to any of the benefits, improvements or services provided by the Association unless the owner thereof shall have subjected his, her or its land to the terms of this Declaration and to the assessments herein provided for. For purposes hereof, accepting title to land within the District after the recording of this Declaration shall satisfy the foregoing requirements.

### SECTION 4. OTHER LANDS - HOW THEY MAY BE ADDED

Developer, at its discretion, may from time to time add to the District such land as now or hereinafter owned or approved for addition by it, provided that the land so added to the District shall at that time be bound by all of the terms of this Declaration and all amendments thereto.

### SECTION 5. USE OF COMMON AREAS

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

The WELLINGTON PARK HOMES ASSOCIATION shall have the right and the power to make reasonable rules and regulations which shall govern the use of the Common Areas and implement the terms of this Declaration and the Declaration of Restrictions as the context requires.

### SECTION 6. POWERS AND DUTIES OF THE ASSOCIATION

(1) The Association shall have the following powers and duties:

(a) To care for, spray, trim, protect, replace and replant trees, shrubbery, bushes, flowers, grass and sod in the Common Areas set aside for the exclusive use of the Owners in the District.

(b) To provide, maintain, protect and, when necessary, design, construct, reconstruct and replace protective lighting within the District when adequate

service of that type is not available from any public source.

(c) To provide for the maintenance of any gateways, entrances, drinking fountains, and ornamental features now existing or which may hereafter be erected or created in said District in any public street or park, or on any land set aside for the exclusive use of the Owners in the District; and also to provide for the maintenance of any streams or natural water-courses within the District.

(d) To provide for the operation and maintenance of and also to establish and enforce rules for the use by the members of any tennis courts, swimming pools, playgrounds, beach areas, green areas and parking areas which now exist or which may hereinafter be included, created, owned or erected by the Association in the District.

(e) To acquire and own the title to such real estate as may be reasonably necessary in order to carry out the purposes of the Association, and to pay taxes on such real estate as may be owned by it; and to pay such taxes as may be assessed against land in the semipublic places or common areas within the District.

(f) To enforce, either in its own name or in the name of any Owner within the District, any or all building or other restrictions which may have been heretofore or may hereafter be imposed upon any of the land in such District, either in the form as originally placed thereon or as modified subsequently thereto, and impose and collect fines for violations of such restrictions; provided, however, that this right of enforcement shall not serve to prevent such changes, releases or modifications as are permissible in the deeds, declaration, contract, plats or certificate of survey in which such restrictions or reservations are set forth, nor shall it serve to prevent the assignment of

those rights by the proper parties, wherever and whenever such rights of assignment exist. The expenses and costs of any enforcement proceedings shall be paid out of the general fund of the Association as provided for herein. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing in his own name any such restrictions.

(g) To manage and control as trustee for its members all improvements, including storm water improvements, located upon common areas in the District, provided that such management and control of said improvements shall at all times be subject to that had and exercised by the City, County, and State, or any one of them in which the land within the District is located.

(h) To mow, care for, maintain and remove rubbish from vacant and unimproved property and to do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property and the parking in front of any property in the District neat in appearance and in good order.

(i) To exercise control over such easements as it may acquire from time to time.

(j) To provide for the collection and disposal of rubbish and garbage, in the discretion of the Board of Directors of the Association.

(k) To levy and collect the assessments which are provided for in this Declaration.

(2) The Association shall have the following additional powers and duties which it may exercise and perform whenever in its discretion it may deem it necessary or desirable, to-wit:

(a) To provide for the plowing and removal of snow from sidewalks and streets, when such services are not available from any public source.

(b) To provide such lights as the Association may deem advisable on gateways, entrances or other features, and in other public or semi-public places, when such facilities are not available from any public source.

(c) To provide for the cleaning of streets, gutters, catch basins and sidewalks and for the repair and maintenance of storm sewers and appurtenant drainage facilities, when such services are not available from any public source.

(d) To erect and maintain signs for the marking of streets, and safety signs for the protection of children and other persons, when such signs are not available from any public source.

(e) To employ duly qualified peace officers for the purpose of providing such police protection as the Association may deem necessary or desirable in addition to that rendered by public authorities.

#### SECTION 7. METHOD OF PROVIDING GENERAL AND SPECIAL FUNDS

(1) For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the improvements and render the services herein provided for, each Lot within the District, owned by a Class A member upon which a dwelling has been erected and is then or has been at any time theretofore occupied as a residence, shall be subject to an annual general fund assessment which may be levied by the Association from year to year, which assessment shall be paid to the Association annually or at such other times as the Association may determine in advance. Anything to the contrary herein notwithstanding, the Developer, in its sole discretion, shall fix the amount of annual assessment, for so long as Developer owns land within the District (including land added to the District). Thereafter, the Board of Directors of the Association shall from year to year fix and determine the total amount required in this general fund and may levy and collect an annual assessment for each Lot owned by a Class A member upon which a dwelling has been erected and is then or has been at any time

theretofore occupied as a residence. Assessments shall commence either upon occupancy of the home or by completed sale, whichever comes first. The assessment for the year in which the dwelling is erected shall be determined on the basis of date of the occupancy permit. On newly constructed single family dwellings first occupied or conveyed within and including the period of January 1 and June 30 of any year, there the annual assessment for such year will be due in full, and on newly constructed homes first occupied or conveyed within and including the period of July 1 and December 31 of any year, assessments will be prorated on the basis of a deduction of one/one hundred eightieth (1/180) of the annual assessment for each day after June 30 of that year. On the resale of any single family dwelling, proration of the assessment shall be on the 365-day year basis.

(2) The maximum annual assessment upon each Lot as aforesaid may be increased by the Board of the Association on all the Lots in the District by an amount not exceeding fifty percent (50%) of the preceding year annual assessment which the Association may levy against such Lot and collect from year to year; provided, that the preceding year annual assessment upon each Lot as aforesaid may be increased on all the Lots in the District by an amount not exceeding one hundred percent (100%) of the previous annual assessment applicable to said Lot, provided that at a meeting of the members specially called for that purpose, prior to the date on which the assessment is levied for the year for which such increase is proposed, seventy-five percent (75%) of the votes of the Class A members present in person or by proxy at such meeting may authorize such an increase by an affirmative vote therefor. The Association shall be empowered to levy and collect special assessments for capital improvements or repairs in such amounts as the said Board deems reasonably necessary.

(3) Unless the increases provided for in paragraph (2) of this Section 7 are specifically limited by the resolutions in which they are contained to be for a specified period, they shall continue to be effective until rescinded by the Association, at a