

PLAT NO. S/D 72-77

MAP NO. 5949

NAME LEISURE LIVING, ~~INC.~~ FIRST ADDITION

LOCATION Northwest corner of 13th and Rock Road

ENGINEER Don C Moehring II

OWNER Leisure Living, Inc.

APPLICATION FILED 7/24/72

SKETCH PLAT FILED NONE SUBMITTED

PRELIMINARY FILED 7-24-72

S/D ACTION 8-3-72 Approved

FINAL FILED 8-29-72

S/D ACTION 9-7-72 Approved subj to conditions

MAPC ACTION 9.14.72 Approved as recommended

BCC ACTION 10-10-72 Approved

RECORDED Oct. 30, 1972

REMARKS _____

S/D 72-77 LEISURE LIVING,
Northwest corner of 13th and Rock
Road by Don C Moehring II

POSTED
2-31-72

ACTION

	DATE
S/D COMMITTEE (Green) Approved	8-3-72
" (Figs) Approved	9-7-72
" subject to conditions	
M.A.P.C. Approved as recommended	9.14.72
B.C.C. RECORDS Approved	10-10-72

Map No. 5949
Sec. No. 7
Twp. No. 27
Range R2E

Subdivision Report and Progress

S/D No.: 72-77

Name: LEISURE LIVING FIRST ADDITION

General Location: NW cor. of 13th Street and
Erick Road

Owner: LEISURE LIVING INC.
Address: 5900 E. CENTRAL Phone: 685-1446
Subdivider: Same as ROBERT H. NELSON, ATT'Y.
Address: OLIVE W. GARVEY BLDG. Phone: 262-3777
Engineer/Surveyor: DON C. MOHRING II
Address: 314 BROWN BLDG. Phone: 263-6781

Application Received 7-24-72
Conf. with Applicant none
Sketch Plat Received none submitted
Present Zoning AA & LC
Proposed Zoning R-5
Letter of Intent note

FINAL PLAT RECEIVED 8-29-72
S/D Comm. Action 9-7-72 Approved
July 10 Conditions
Dept. Report on Final 9-11-72
M.A.P.C. ACTION 9-14-72 Approved
Dept. Report on Final 9-15-72
Letter on Irons Received N/A
Title/Taxes Rec'd & Reviewed 7-18-72
Final Review 9-5-72
Referral to B.C.C. 10-5-72

PREL. PLAT RECEIVED 7-24-72
S/D Comm. Action 8-3-72
Approved
Dept. Report on Prel. Approved
Approved only to condition 8-9-72
TRACING PROGRESS:
Received 10-4-72
Released 10-25-72
Received
Released

B.C.C. ACTION 10-10-72 Approved
Recorded 10-30-72

Comments:

ASSOC ZONE CASE Z-1418, "AA & LC" TO "R-5"
10-25-72 - Released tracing to Don Moehring for record

REGISTER OF DEEDS
SEDGWICK COUNTY, KANSAS

F
11-1-72

Leisure Living First ADDITION was

filed for record on October 30, 1972

S-2 7-16
81
vh

John Hall
Register Of Deeds

T9-328

November 8, 1972

Ralph C. Eberly, City Clerk

Jack H. Galbraith, Chief Planner

S/D 72-77 - Leisure Living First Addition

The above referred to plat was approved by the MAPC on September 14, 1972 and by the Board of City Commissioners on October 10, 1972. One of the conditions of approval of the plat was that the applicant guarantee the extension of city water to serve subject property.

An Irrevocable Letter of Credit in the amount of \$24,000 from the Fourth National Bank in favor of the account of Leisure Living, Inc. was submitted on September 28, 1972. Said letter of credit guarantees the extension of City water to serve subject property. Our office has now been advised by the City Water Department that the applicant, Leisure Living, Inc. has now entered into a cash contract for the required water service extension and therefore the original letter of credit in the amount of \$24,000 is no longer required and may now be released.

Your office is holding said letter of credit which may now be released by request from the applicant.

If you have any questions concerning this matter, please call.

JHG:CLN:rme

cc: Leisure Living, Inc., 5900 East Central, 67208
The Fourth National Bank & Trust Co., 200 East Douglas, 67202

THE CITY OF WICHITA

WATER DEPARTMENT

263-2141 — AREA CODE 316
CITY BUILDING ANNEX
104 S. MAIN — WICHITA, KAN. 67202

November 6, 1972

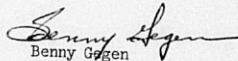
To Jack Galbraith, Chief Planner

From Benny Gegen, Civil Engineer II

Subject: Irrevocable Letter of Credit--
Leisure Living, Inc.

On this date, Mr. Robert T. High of Leisure Living, Inc. was in with a signed Plan "A" Water Main Extension Contract and a check for the total estimated cost of the Extensions. Therefore, the Irrevocable Letter of Credit for \$24,000.00 can be released.

Mr. High would like to pick up the Letter of Credit as soon as possible as they have \$73,650.00 tied up until he can do so.


Benny Gegen
Civil Engineer II

cc: Ralph C. Eberly, City Clerk
Mr. Robert T. High
5900 East Central
Wichita, Kansas 67208

BG:le



RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF CITY COMMISSIONERS

SUBDIVISION APPROVAL

S/D Number 72-77 Name LEISURE LIVING FIRST ADDITION
Application Filed: 7-24-72 Sketch Filed: None Submitted
Preliminary Plat Filed: 7-24-72 Approved by S/D: 8-3-72
Final Plat Filed: 8-29-72 Approved by S/D: 9-7-72
Approved by Metropolitan Area Planning Commission: 9-14-72

DESCRIPTION

General Location: Northwest corner of 13th Street and Rock Road

Surveyor or Engineer: Don C. Moehring, II
Owner: Leisure Living, Inc.
Address: 5900 East Central

- | | | | |
|--------------------------|--------------|--------------------------------|-----------|
| 1. Gross Acreage of Plat | 7.80 | 5. Lineal Feet of New Streets: | |
| 2. Number of Lots: | 65 | a. 50 R/W | 1361 ft. |
| Residential | _____ | b. _____ R/W | _____ ft. |
| Commercial | _____ | c. _____ R/W | _____ ft. |
| Industrial | _____ | d. _____ R/W | _____ ft. |
| Other | _____ | e. _____ R/W | _____ ft. |
| Total Number of Lots: | 65 | TOTAL | 1361 ft. |
| 3. Minimum Lot Frontage: | 25.5 ft. | 6. Existing Zoning: | AA & LC |
| 4. Minimum Lot Area: | 1,625 sq.ft. | | |

Valid petitions have been submitted guaranteeing the construction of sidewalks on the west side of Rock Road and the north side of 13th Street North, and the extension of sanitary sewer to serve the Addition. An irrevocable letter of credit has been submitted guaranteeing the extension of a water main to serve the Addition. A certificate has also been submitted certifying the petitions.

Planning Commission Recommendation:

That the plat be recorded within 30 days after approval by the Board of City Commissioners. KAMEN moved, JACKSON seconded and it carried unanimously.

NOTE: Associated zone case Z-1418 "AA" and "LC" to "R-5" was approved by the Board of City Commissioners on September 12, 1972, subject to platting.

ACTION: Receive and file the irrevocable letter of credit and approve the petitions, instruct the Director of Law to prepare the necessary resolutions, and the City Clerk to file the certificate with the Register of Deeds, the publication and filing costs of which shall be billed to the applicant; and approve the plat as approved by the Metropolitan Area Planning Commission and authorize the Mayor to sign.

CERTIFICATE

City of Wichita)
Sedgwick County) ss
State of Kansas)

I, Leisure Living, Inc., owner and plat-
tor of Leisure Living, First Addition, do hereby
certify that petitions for the following improvements have been
submitted to the Board of Commissioners of the City of Wichita,
Kansas:

1. Sidewalk Petition on the West Side of Rock Road.
2. Sidewalk Petition for the North Side of Thirteenth Street.
3. Sewer Petition to Leisure Living First Addition
- 4.
- 5.
- 6.
- 7.

As a result of the above-mentioned petitions for im-
provements, lots within Leisure Living First Addition
may be subject to special assessments assessed thereto for the
cost of constructing the above-described improvements.

Signed this 18th day of September, 1972.

Leisure Living, Inc.

By X. Lee Cooper

President



City of Wichita)
Sedgwick County) ss
State of Kansas)

Be it remembered that on this 18th day of September
1972, before me, a notary public in and for said County and State,
came X. Lee Cooper, to me personally
known to be the same person who executed the fore-going instrument
of writing and duly acknowledged the execution of same.

In Testimony Whereof, I have hereunto set my hand and
affixed my notarial seal the day and year above written.

Robilee Blodgett
Notary Public



My Commission Expires:
My Commission Expires July 1, 1975

**OFFICE COPY
DO NOT REMOVE**

ARTICLES OF INCORPORATION
OF

THE HERITAGE HOMEOWNER'S ASSOCIATION, INC.

A Not-for-Profit Corporation

I, the undersigned incorporator, hereby form and establish a corporation not-for-profit under the laws of the State of Kansas.

FIRST: The name of the corporation is THE HERITAGE HOMEOWNER'S ASSOCIATION, INC.

SECOND: The location of its registered office in the State of Kansas is 1600 Vickers-KSB&T Building, Wichita, Kansas, and the name of its resident agent at such address is Willard B. Thompson.

THIRD: This corporation is organized not-for-profit and the nature of its business is:

(a) To engage in the administration of The Heritage, a condominium development under the Kansas Apartment Ownership Act, and to do all things in any way related or incidental thereto.

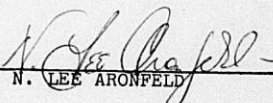
(b) To engage in any lawful act or activity for which corporations may be organized under the general corporation code of Kansas and to have and to exercise all powers conferred by the laws of Kansas as now in effect or as hereafter amended.

FOURTH: The corporation shall have no authority to issue stock and the conditions of membership in the corporation shall be as set forth in the By-Laws.

FIFTH: The name and mailing address of the incorporator is N. Lee Aronfeld, 5900 East Central, Wichita, Kansas 67208.

SIXTH: These Articles of Incorporation may be amended upon the vote of a majority of a quorum of the members of the corporation.

IN WITNESS WHEREOF, the undersigned incorporator has subscribed his name this 1st day of August, 1972.



N. LEE ARONFELD

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

Personally appeared before me, a Notary Public in and for Sedgwick County, Kansas, the above named N. LEE ARONFELD, personally known to me to be the same person who executed the foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal this 1st day of August, 1972.



Notary Public

My Commission Expires: My Commission Expires July 1, 1975



OFFICE COPY
DO NOT REMOVE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE HERITAGE

KNOW ALL MEN BY THESE PRESENTS, that this Declaration, made on the date hereinafter set forth by LEISURE LIVING, INC., a Kansas corporation (hereinafter called the "Declarant");

WITNESSETH, THAT:

WHEREAS, Declarant is the owner of all those tracts and parcels of land known as "Leisure Living First Addition, Wichita, Sedgwick County, Kansas", according to the recorded plat thereof, and also described as:

The South 600 feet of the East Half of the Southeast Quarter of the Southeast Quarter (E/2 SE/4 SE/4) of Section 7, Township 27 South, Range 2 East of the 6th P.M., except the South 225 feet of the East 250 feet thereof;

and

WHEREAS, Exhibit "A" hereto attached is a reproduction of the final recorded plat of Leisure Living First Addition, Wichita, Sedgwick County, Kansas, supplemented however by lines of demarcation superimposed by Declarant showing said addition to contain three phases denominated "Phase I", "Phase II", and "Phase III"; and

WHEREAS, Declarant will convey the property described as Phase I in Exhibit "A" subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, Declarant retains the sole and exclusive right to later submit to the provisions of this Declaration the property described in Exhibit "A" as Phase II and Phase III, together with all improvements then constructed or to be constructed thereon.

NOW, THEREFORE, Declarant does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the property described as Phase I in said Exhibit "A" to the condominium form of ownership as provided by Kansas law. Said Phase I property shall be held, sold and conveyed subject to the following covenants, condi-

tions and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Phase I property. Such covenants, conditions and restrictions shall be binding on all parties having or acquiring any right, title or interest in the Phase I property or any part thereof and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. Act means the Apartment Ownership Act found in Kansas Statutes Annotated, in Chapter 58 at Article 31.

Section 2. Assessment means an owner's share of the common expenses which from time to time is assessed against an owner by the Association in the manner herein provided.

Section 3. Association means The Heritage Homeowner's Association, Inc., its successors and assigns, acting on behalf of the owners in accordance with the development documents for the purpose of administering The Heritage.

Section 4. Building means the composite of all adjoining residences comprising a single residential structure as shown on the master plot plan or supplemental plats.

Section 5. Building Number means the number, letter or combination thereof designating a building in the development documents, the master plot plan or supplemental plats.

Section 6. Common Areas and Facilities mean that portion of the property made subject to this Declaration and designated herein for the common use and enjoyment of the owners but shall not include any portion of the property now or hereafter made subject to this Declaration on which residences have been or shall be constructed pursuant to

the terms of the development documents. The meaning of common areas and facilities also includes, but shall not be limited to, all yards, streets, driveways, parking areas, recreational facilities, community facilities, swimming pools, pumps, trees, landscaping, pavements, streets, pipes, wires, conduits and other public utility lines and other personal property owned by the owners as tenants in common which may be necessary or convenient to the existence, maintenance and safety of the development. All conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which are contained within a residence are not part of the common areas and facilities.

Section 7. Common Expenses means (a) expenses of administration, maintenance, repairs and replacements of the common areas and facilities, (b) expenses determined by the Association to be common expenses and which are lawfully assessed against the owners by the Association, and (c) expenses declared to be common expenses by provisions of the act, this Declaration or the By-Laws of the Association.

Section 8. Declarant means Leisure Living, Inc., a Kansas corporation, its successors and assigns.

Section 9. Development means the entire undertaking pursuant to the development documents which shall commence with the filing of this Declaration for record in the Office of the Register of Deeds, Sedgwick County, Kansas, and shall continue thereafter until terminated as provided for herein. Attached hereto as Exhibit _____ and made a part hereof is a brochure denominated "The Heritage Elegant Townhomes" showing a site plan of The Heritage for 65 possible residential units and recreational and common areas and facilities, floor plans for the various types of residences, front, rear and side elevations of said residences and an outline of specifications, the contents of said brochure showing among other things:

- (a) description of each building within The Heritage;
- (b) number of stories and basements in each building;
- (c) number of residences in each building;
- (d) principal materials of which the residences are to be constructed;
- (e) residence number of each residence, a showing of its location, approximate area, number of rooms and immediate common area (if any) to which it has access;
- (f) description of common areas and facilities.

(g) Description of limited common areas, if any, stating to which residence(s) their use is reserved.

The description of the land on which the improvements are to be located is reflected in Exhibit "A" attached hereto.

Section 10. Development Documents means those documents by means of which The Heritage will be established as a condominium consisting of (a) this Declaration of Covenants, Conditions and Restrictions, (b) the By-Laws of the Association, and (c) the deeds by means of which Declarant will convey particular residences to the purchasers thereof.

Section 11. Majority or Majority of Owners means the owners with fifty-one percent (51%) or more of the votes in accordance with the percentages assigned in this Declaration for voting purposes.

Section 12. Owner means the record owner, whether one or more persons, of a fee simple title to any residence which is a part of the property and an undivided interest in the fee simple estate of the common areas and facilities excluding, however, those persons having such interest merely as security for the performance of an obligation. The Declarant is included within the meaning of said term so long as it is a record owner as herein provided.

Section 13. Person means an individual, corporation, partnership, association, trustee or other legal entity.

Section 14. Phase I Property means all that tract or parcel of land described as Phase I in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 15. Phase II Property means all that tract or parcel of land described as Phase II in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 16. Phase III Property means all that tract or parcel of land described as Phase III in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 17. Property, unless the context should otherwise require, means all those tracts or parcels of land described in Exhibit

"A" attached hereto and, by reference, made a part hereof, now or hereafter submitted to the provisions of the act by means of this Declaration or any duly authorized amendment hereof.

Section 18. Residence means a single family residential unit constructed or to be constructed as part of a residential building which contains two or more of such single family residential units. As used herein, the term "residence" shall be synonymous with such other terms, if any, which may be used to describe said units such as "townhouse", "apartment", "villa", "flat", "dwelling", etc.

Section 19. Residence Number means the number, letter, or combination thereof designating a residence in the development documents, the master plot plan or the supplemental plats.

Section 20. The Heritage means the entire undertaking pursuant to the development documents which shall commence with the filing of this Declaration for record in the Office of the Register of Deeds, Sedgwick County, Kansas, and shall continue thereafter until terminated as provided for herein.

ARTICLE II

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person who is the record owner of a fee or undivided fee interest in any residence which is a part of the property which is or may become subject by covenants of record to assessment by the Association shall be a member of the Association. Included as a member of the Association is the Declarant so long as it is a record owner as herein provided. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation. No owner, whether one or more persons, shall have more than one membership per residence. Membership shall be appurtenant to and may not be separated from ownership of any residence. Ownership of a residence shall be the sole qualification for membership.

Section 2. Voting Rights. The Association shall have one class of voting membership which shall consist of all owners including the Declarant. Such owners shall be entitled to one vote for each residence in which they hold the interest required for membership by Section 1 of this Article II. When more than one person holds such interest in any residence, the vote for such residence shall be exercised as they among themselves determine. In no event shall more than one vote be cast with respect to any residence.

ARTICLE III

PROPERTY RIGHTS

Section 1. Development Plan. The Heritage will be developed in the following manner:

(a) General. The Declarant shall construct or cause to be constructed on the Phase I property residential buildings containing a total of 8 residences and the clubhouse and swimming pools. In the event that the Declarant should submit the Phase II property to the provisions of this Declaration pursuant to and in accordance with the option set forth in subparagraph (b) of this Section 1, the Declarant shall construct or cause to be constructed on said Phase II property residential buildings containing a total of 16 residences. In the event that the Declarant should submit the Phase III property to the provisions of this Declaration pursuant to and in accordance with the option set forth in subparagraph (c) of this Section 1, the Declarant shall construct or cause to be constructed on said Phase III property residential buildings containing a total of 41 residences. Each of said residences shall be constructed substantially in accordance with the brochure hereto attached and with architectural plans and specifications entitled "The Heritage" prepared by _____, Architects. That portion of said architectural plans which constitutes floor plans shall be filed for record simultaneously with the filing of this Declaration, in the office of the Register of Deeds, Sedgwick County, Kansas. The Declarant expressly reserves the right (a) to make minor alterations in the location of said buildings, or any one or more of them, as shown on the brochure hereto attached in order to alleviate problems of construction, if any, which may be caused by unsuitable terrain or soil conditions, and (b) to alter the composition of said buildings, or any one or more of them, as shown on said brochure by deleting therefrom any type of residence

which may be determined by the Declarant on the basis of its marketing experience to be unpopular and by substituting in lieu thereof another type of residence the architectural floor plans of which shall have been filed for record as hereinabove provided; provided, however, that no change shall be made or permitted in the total number of residences contemplated, within any particular phase, in the total number of residences contemplated within any particular building, in the principal materials of construction or in the general architectural design and appearance. As and when the construction of each of said buildings is completed and prior to the first conveyance of a residence contained therein there will be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, an amendment to this Declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the brochure and plan and specifications theretofore filed of record, together with such amendments and modifications (if any) as are reflected in the supplemental brochure and plans and specifications, if any, being filed of record simultaneously with said amendment, fully and accurately depict the buildings and residences described in said amendment as built. Said amendments to this Declaration, together with the brochure and plans and specifications filed prior thereto and such supplemental brochure and plans and specifications, if any, filed simultaneously with said amendments, shall describe in their entirety the buildings and residences contained therein including the number of stories and basements, the number of residences contained in each building, the principal materials of which the buildings and residences are constructed, the approximate area of each residence, the number of rooms, immediate common area to which it has access and such other data as may be necessary for its proper identification. All of the property, except that on which residences shall have been constructed as evidenced by said brochures and plans and specifications as shall have been filed of record, shall be common areas and facilities.

(b) Option to Submit Phase II Property. Declarant hereby reserves unto itself the option, to be exercised at its sole discretion, to submit the Phase II property to the provisions of this Declaration and thereby cause said Phase II property to be and become a part of The Heritage. This option may be exercised by the Declarant only upon the execution by it of an amendment to this Declaration which shall be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, not later than one year from the date hereof.

Any such amendment shall expressly submit the Phase II property to all of the provisions of this Declaration and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B" and, by reference, made a part hereof, as either or both may then be amended. Upon the exercise, if any, of this option, the provisions of this Declaration shall then be understood and construed as embracing the Phase I property and the Phase II property together with all improvements then constructed or to be constructed thereon. Should this option not be exercised within the term specified, it shall in all respects expire and be of no further force or effect. In such event, the Declarant shall not be obligated to impose on the Phase II property any covenants, conditions or restrictions the same as or similar to those contained herein.

(c) Option to Submit Phase III Property. Declarant hereby reserves unto itself the option, to be exercised at its sole discretion, to submit the Phase III property to the provisions of this Declaration and thereby cause said Phase III property to be and become a part of The Heritage. This option may be exercised by the Declarant only after, or simultaneously with, the exercise of its option to submit the Phase II property and upon the execution by it of an amendment to this Declaration which shall be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, not later than two years from the date hereof. Any such amendment shall expressly submit the Phase III property to all of the provisions of this Declaration and the By-Laws of the Association, a copy of which is attached hereto as Exhibit "B" and, by reference, made a part hereof, as either or both may then be amended. Upon the exercise, if any, of this option, the provisions of this Declaration shall then be understood and construed as embracing the Phase I property, the Phase II property and the Phase III property together with all improvements then constructed or to be constructed thereon. Should this option not be exercised within the term specified, it shall in all respects expire and be of no further force or effect. In such event, the Declarant shall not be obligated to impose on the Phase III property any covenants, conditions or restrictions the same as or similar to those contained herein.

Section 2. Residences. Each residence, together with its undivided interest in the common areas and facilities, shall for all purposes constitute real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner

as any other real property, subject to the provisions of this Declaration. Each owner shall be entitled to the exclusive ownership and possession of his residence, subject to the provisions of the Act, the By-Laws of the Association and this Declaration. Each residence shall include all of the space within the boundaries thereof. There shall be no horizontal boundaries. The vertical boundaries, however, shall be the outer surfaces of all exterior walls (including enclosed patio walls) and the center line of all party walls as shown on the brochures and plans and specifications which shall be on file with the Register of Deeds, Sedgwick County, Kansas; provided, however, that all attachments to the exterior walls of a residence which are a part thereof, which protrude beyond said boundaries and which were constructed in conformity with the architectural plans and specifications, shall be deemed to be included within said boundaries. Each owner of a residence, by acceptance of a deed therefor, agrees that he has had full opportunity to inspect and examine the residence thus acquired by him and waives any claim or demand which he might otherwise have had against the Declarant or any other person whomsoever as a result of any discrepancy between the residence as it then exists and as it is described in this Declaration, and in the above described brochures and plans and specifications. The ownership of each residence shall include, and there shall pass with each residence as appurtenances thereto whether or not separately described, all of the right, title and interest of a residence owner in the property, which shall include but not be limited to an undivided interest in the common areas and facilities, membership in the Association and an undivided interest in the funds and assets held by the Association.

Section 3. Common Areas and Facilities. Ownership of the common areas and facilities shall be by the owners as tenants in common. The percentage of undivided interest of each owner in and to the common areas and facilities at any particular time shall be as set forth in Exhibit "C" attached hereto and, by reference, made a part hereof. Declarant's percentage of undivided interest in and to the common areas and facilities at any particular time shall be the percentage derived by subtracting from "100" percentum the total at said time of the percentages of all other residence owners. The percentages of undivided interest of the owners as defined in this Declaration may be altered only by the consent of all owners (or such lesser number of owners as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration, provided however, that each owner of a residence,

by acceptance of a deed therefor, consents and agrees to the alteration of said percentages in accordance with and as provided for in said Exhibit "C" at such time or times, if any, as the Phase II property and/or the Phase III property is submitted by the Declarant to the provisions of this Declaration as provided for in Section 1 of this Article III and, in furtherance thereof, each such owner irrevocably appoints the Declarant as his attorney in fact for the purpose of further evidencing such consent and agreement should the Declarant determine same to be necessary or desirable. The percentage of undivided interest of each owner in the common areas and facilities is appurtenant to the residence owned by him. No appurtenance may be separated from the residence to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the residence whether or not expressly mentioned or described in a conveyance or other instrument describing the residence. The common areas and facilities shall remain undivided and no owner nor any other person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act and Article VIII, Section 4, hereof. Each owner and the Association may use the common areas and facilities for the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the other owners.

Section 4. Limited Common Areas and Facilities. Ownership of each residence shall entitle the owner or owners thereof to the exclusive use of such portions of the common areas and facilities as may be designated on the brochures and plans and specifications provided for in Section 1 of this Article III by the same number, letter or combination thereof as may be used to designate the residence to which such portions of the common areas and facilities appertain, together with the right of ingress and egress in and upon such portions of the common areas and facilities.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 1. Approval Required for Changes. No construction of any nature whatsoever shall be commenced or maintained upon any particular residence or the limited common areas and facilities appertaining thereto after the purchase of such residence from the Declarant, its successors or assigns, nor shall any exterior addition to or change

or alteration therein be made unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural control committee composed of three or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within 45 days after said plans and specifications shall have been submitted to it, approval will not be required and this Article IV will be deemed to have been fully complied with.

ARTICLE V

MAINTENANCE AND REPAIRS

Section 1. By Residence Owner: The responsibility of a residence owner is as follows:

(a) To maintain in good condition and to repair and to replace at his expense all portions of his residence and all interior surfaces within or surrounding it (such as the surfaces of the walls, ceiling, and floors), and to maintain and to repair the fixtures therein, including the heating and air conditioning equipment, and to pay for any utilities which are separately metered to his unit. Every residence owner must perform promptly all maintenance and repair work within his residence, as aforesaid, which, if omitted, would affect the property and the condominium project in its entirety or in a part belonging to other owners; each residence owner shall be expressly responsible for the damages and liability that his failure to do so may cause. Said residence shall be maintained and repaired in accordance with the building plans originally utilized by the Declarant, copies of which are to be on file in the office of the Association, except for changes or alterations approved by the Board of Directors as provided in this Declaration;

(b) To maintain in good condition and to repair and to replace at his expense the limited common areas and facilities appurtenant to his residence.

(c) Not to make any alterations in the portions of the residence or the residential building or the common areas and facilities

which are to be maintained by the Association, or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness thereof or which, in the sole opinion of the Board of Directors of the Association, would detrimentally affect the architectural design thereof, without first obtaining the written consent of the Board of Directors of the Association and of the residence owner, or owners, who are affected by such alterations or additions;

(d) Not to paint or make any alteration, decoration, repair, replacement or change of or on the common areas and facilities or to any outside or exterior portion of each residence, including doors, windows, or shutters, without the written approval of the Board of Directors;

(e) To promptly report to the Association or its agents any defect or need for repairs, the responsibility for the remedying of which is with the Association;

(f) Not to make repairs to any plumbing or electrical wiring located within the common areas and facilities except by plumbers or electricians authorized to do such work by the Board of Directors of the Association. The provisions as to the use of an authorized plumber or electrician shall not be applicable to an approved first mortgagee or to Declarant. Plumbing and electrical repairs within a residence shall be paid for and be the financial obligation of the owner of the residence;

(g) Any officer of the Association or any agent of the Board of Directors shall have the irrevocable right to have access, to each residence from time to time during reasonable hours as may be necessary for inspection, maintenance, repair or replacement of any common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another residence or residences; and

(h) To abide by and comply with the By-Laws of the Association and the rules and regulations promulgated by its directors.

Section 2. By the Association: The responsibility of the Association is as follows:

(a) To repair, maintain and replace all of the common areas and facilities, including all exterior surfaces and parking spaces, whether part of the common areas and facilities, limited common areas and facilities, or part of a residence, and to maintain and repair all landscaping and roadways in or upon the property; and

(b) To maintain, repair, and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of any and all utility services located within the common areas and facilities.

Section 3. The Board of Directors of the Association may enter into a contract with any firm, person, or corporation for the purpose of providing for services, labor, work and materials necessary for the maintenance and repair of the property and the obligations of the Association as hereinabove set forth in Section 2 of this Article. The Board of Directors may, by contract, empower and grant to such firm, person, or corporation the right of access granted and given to the Board of Directors hereunder.

ARTICLE VI

ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Subject to the provisions of Sections 7 and 10 of this Article VI, the Declarant, for each residence owned by it, hereby covenants, and each owner of any residence, by acceptance of a deed therefor whether or not it shall be so expressed in any such deed is deemed to covenant and agree to pay to the Association: (a) annual assessments or charges, and (b) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon, shall be a charge on and a continuing lien upon the property against which each such assessment is made. A notice claiming such lien may be filed for record by the Associa-

tion in the office of the Register of Deeds, Sedgwick County, Kansas, but in no event shall any such claim of lien be filed until such sums remain unpaid for not less than 30 days after the same shall become due. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied. Each owner shall be liable for his portion of each assessment coming due while he is the owner of a residence and his grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that any such grantee shall be entitled to a statement from the Association's Board of Directors or its duly authorized Manager setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the residence conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. The purchaser of a residence at a judicial or foreclosure sale shall be liable only for assessments coming due after the date of such sale.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the property and in particular for the improvement and maintenance of the property, services and facilities devoted to this purpose and related to the use and enjoyment of the common areas and facilities and of the residences situated upon the property. Such assessments shall include, but shall not be limited to, funds for the actual costs to the Association of all administration, insurance, repairs, replacements and maintenance of the residences and common areas and facilities as may be required by the Declaration and as may from time to time be authorized by the Association or its Board of Directors. Other facilities and activities to be paid for by means of such assessments include management fees, compensation for such personnel and agents and experts as shall be required for the proper administration and operation of the development, mowing grass, caring for the grounds, swimming pool and other recreational facilities, landscaping, exterior roofing (shingles) and outer surfaces of exterior walls of the residences, garbage pickup and other services furnished to residences by the Association and which are not billed direct to the residence owners, and other charges as may be required by this Declaration or that the Association or its Board of Directors shall determine to be necessary to meet the primary purposes of the Association, including the establishment and maintenance of a reserve for repairs, replacements and

maintenance and other charges as specified herein. It is anticipated that ad valorem taxes and governmental assessments, if any, upon the property will be assessed by the taxing authorities upon the residence owners, and that each such assessment will include the assessed value of the residence and of the undivided interest of the residence owner in the common areas and facilities. Any such taxes and special assessments upon the property which are not so assessed shall be included in the budget of the Association as recurring expenses and shall be paid by the Association as a common expense. Each residence owner is responsible for making his own return of taxes and such return shall include such owner's undivided interest in the common areas and facilities.

Section 3. Annual Assessments. The initial annual operating assessment shall be \$480.00 for each residence which is a part of the property, which said annual assessment shall continue and be in effect until the 31st day of December, 1973. Annual assessments for insurance will be made in accordance with required premiums for same. Thereafter, after a consideration of the projected financial needs and other requirements of the Association as provided for and enumerated in Section 2 of this Article VI, the Board of Directors of the Association shall fix, annually, the amount of succeeding annual assessments in accordance with Section 7 of this Article VI and in accordance with the By-Laws of the Association.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association's Board of Directors may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of capital improvements upon the common areas and facilities, including the necessary fixtures and personal property related thereto; provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of the owners who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be delivered to all residences or sent to all owners not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

Section 5. Rate of Assessment. Subject to the provisions of Sections 7 and 10 of this Article VI, and unless otherwise expressly provided herein, each owner's share of the total annual assessments and the total special assessments shall be in proportion to his percentage of undivided interest in and to the common areas and facilities as provided for in Article III, Section 3, hereof; provided, however,

Section 6. Quorum for Any Action Authorized Under Sections 3 and 4. At the first meeting called, as provided for in Sections 3 and 4 of this Article VI, the presence at the meeting of owners or of proxies entitled to cast forty percent (40%) of all the votes of the Association shall constitute a quorum. If the required quorum is not forthcoming at the first meeting called, not more than two subsequent meetings may be called, subject to the notice requirement set forth in said Sections 3 and 4, and the required quorum at any such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for in this Article VI shall be established on a calendar year basis and shall commence as to each residence conveyed by the Declarant to another owner on the date of each such conveyance. The initial annual operating assessment and the insurance assessment for each residence thus conveyed shall be adjusted according to the number of days remaining in the calendar year. Except for that portion of each such adjusted assessment as may be attributable to the number of days remaining in the month of conveyance which shall be paid to the Association at the time of such conveyance, each such adjusted assessment shall be paid by the owner to the Association in equal monthly installments commencing on the first day of the month following such conveyance. Thereafter, the Association's Board of Directors shall fix the amount of the annual operating assessment and the insurance assessment against each residence and when possible deliver written notice of same to each residence or send written notice of same to every owner subject thereto at least 30 days in advance of each annual assessment period. Unless otherwise provided by the Board of Directors, one-twelfth (1/12th) of the annual assessment for each residence shall become due and payable on the first day of each month during the assessment period and shall be paid to the Association when due without further notice from the Association. Until such time as the Declarant delivers management of the development to the Association as provided for in Article VII, Section 4, hereof, those residences not previously conveyed by the Declarant to other owners shall be exempt from the assessments created herein, as provided for in Section 10 of this Article VI, although the Declarant shall provide such additional funds as may be necessary to defray all common expenses accruing up to such time, such additional

funds to be provided by the Declarant without cost to or claim for reimbursement by the other owners and as and when necessary in order to administer the development in the manner provided for and contemplated herein. At such time as the Declarant delivers management of the development to the Association all residences contemplated in the development owned by the Declarant and not previously conveyed by it shall be and become subject to the assessments provided for in this article VI at such rates and on such terms and conditions as may then be applicable to all residences conveyed by the Declarant prior thereto.

Section 8. Effect of Non-Payment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight percent (8%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or foreclose its lien against such owner's residence. Each owner, by his acceptance of a deed to a residence, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of such charges as a debt or foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article VI shall be in favor of the Association and shall be for the benefit of all other owners. The Association, acting on behalf of the owners, shall have the power to bid on the residence at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common areas and facilities or abandonment of his residence.

Section 9. Priority of Lien. The lien of the assessments provided for in this Article VI shall be prior and superior to all other liens except only (a) ad valorem taxes and (b) all sums unpaid on a first mortgage or deed to secure debt of record. The sale or transfer of any residence shall not affect the assessment lien; provided, however, that the sale or transfer of any residence pursuant to the foreclosure of a first mortgage thereon, shall extinguish the lien of such assessments as to the payments thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such residence from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. All residences which are a part of the property shall be exempt from the assessments created herein until each is conveyed by the Declarant to another owner, provided however, that all such residences owned by the Declarant and not so conveyed by it shall be and become subject to such assessments at such time as the Declarant delivers management of the development to the Association whereupon such assessments shall be imposed at such rates and on such terms and conditions as may then be applicable to all residences conveyed by the Declarant prior thereto. Except as provided herein, no land or improvements devoted to dwelling use and no undivided interest in the common areas and facilities shall be exempt from said assessments.

ARTICLE VII

ADMINISTRATION

Section 1. Responsibility for Administration. Subject to the provisions of Section 4 of this Article VII, the administration of The Heritage, the maintenance, repair, replacement and operation of the common areas and facilities and those acts required of the Association by the development documents shall be the responsibility of the Association. Such administration shall be governed by the Act and the development documents. The duties and powers of the Association shall be those set forth in the development documents together with those reasonably implied to effect the purposes of the Association and the development. Such duties and powers shall be exercised in the manner provided by the development documents.

Section 2. Management Agreements. The Association shall enter into such management agreements as may be necessary or desirable for the administration and operation of the development. The first such Management Agreement, attached hereto as Exhibit "C", shall be between the Association and Declarant (or its nominee or assignee) and shall become effective when Declarant delivers management of the development to the Association at the time specified in Section 4 of this Article VII, and shall continue for a period of not less than five years thereafter or as sooner terminated as provided in said Management Agreement.

Any other management agreements shall be entered into pursuant to resolution duly adopted by the Association's Board of Directors, each of which shall provide therein: the compensation to be paid, the term thereof which shall not exceed 10 years, the manner in which and terms upon which same may be terminated, and such other matters as may be agreed upon which are not inconsistent with the terms of the development documents. During his tenure, the person with whom the Association contracts for the administration and operation of the development (hereinafter sometimes referred to as the "Manager") shall exercise all the powers and shall be responsible for the performance of all the duties of the Association as provided for in the Act and the development documents, excepting those powers and duties specifically and exclusively assigned to the officers, directors or members of the Association by the Act or the development documents. The Manager shall be a responsible individual or corporation, as the Board of Directors shall determine, having experience adequate for the management of a development of this type and shall be bonded in such amount as the Board of Directors shall reasonably require. Any such Manager may be a stockholder of Declarant, or a corporation or other entity owned wholly or in part by Declarant or any stockholder of Declarant. Prior to the expiration or termination of any such management agreement, or as soon thereafter as may be reasonably practicable, the Association shall enter into a new management agreement which shall become operative immediately upon the expiration or termination of the preceding management agreement or at the earliest practicable opportunity. Copies of each management agreement then currently in effect shall be made available for inspection by the owners, each of whom shall be bound by the terms and conditions thereof.

Section 3. Limitation of Liability: Indemnification. Notwithstanding the duty of the Association to maintain, repair and replace parts of the common areas and facilities, the Association shall not be liable for injury or damage caused by any latent condition of the common areas and facilities for injury caused by the elements, owners or other persons, nor shall any officer or director of the Association be liable to any owner for injury or damage caused by such officer or director in the performance of his duties unless due to the willful misfeasance or malfeasance of such officer or director. Each officer and director of the Association shall be indemnified by the owners against all expenses and liabilities, including attorneys' fees, reasonably incurred or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer or director of the Association,

or any settlement, whether or not he is an officer or director of the Association at the time such expenses and liabilities are incurred, except in such cases where the officer or director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being for the best interests of the Association.

Section 4. Administration by Declarant. Notwithstanding anything contained herein to the contrary, the Declarant shall be responsible for the administration of the development and the Association will not begin to function through its other members until such time as the Declarant shall have conveyed all of the residences now or hereafter made subject to this Declaration to the respective purchasers of same, at which time such fact shall be certified to the Association by the Declarant, and at which time the management of the development shall be delivered to the Association subject however to the aforesaid Management Agreement attached hereto as Exhibit "C", together with all books and accounts, which shall be in balance; provided, however, that the Declarant may, at its option and in the exercise of its sole discretion, deliver management of the development to the Association at such earlier date as may be selected by the Declarant. Until such time, the duties and powers of the Association, including those of the Board of Directors, as specified in the development documents, shall be performed by the Declarant and/or a Manager employed by the Declarant on behalf of the Association (as provided for in Section 2 of this Article VII and as herein expressly authorized) at a rate of compensation which, under the circumstances and in the sole discretion of the Declarant, shall be reasonable in amount. Such compensation if any, shall be paid as a recurring common expense of the Association and out of the annual assessments provided for in Article VI hereof and not in lieu thereof or in addition thereto.

ARTICLE VIII

INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors shall have the authority to and shall obtain insurance for all of the improvements on the property (with the exception of improvements and betterments made by the respective owners at their expense) against loss or damage by fire or other hazards, including extended coverage,

vandalism and malicious mischief, in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard, and shall also obtain a public liability policy covering all common areas and facilities and all damage or injury caused by the negligence of the Association or any of its agents, which public liability policy shall be at least \$100,000 single limit as respects bodily injury and property damage. Premiums for all liability insurance shall be common expenses. All insurance coverage obtained by the Board of Directors shall be written in the name of the Board of Directors of the Association as Trustee for the residence owners as their interests appear herein. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in the State of Kansas and holding a rating of "AAA" or better by Best's Insurance Reports.

(b) All policies shall be for the benefit of the residence owners and their mortgagees as their interests may appear.

(c) Provision shall be made for the issuance of a certificate of insurance to each owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular owner's residence.

(d) The original of all policies and endorsements thereto shall be deposited with the Insurance Trustee which shall hold them subject to the provisions of Section 3 of this Article VIII.

(e) Exclusive authority to adjust losses under policies hereafter in force on the property shall be vested in the Association's Board of Directors; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(f) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees.

(g) Each owner may obtain additional insurance at his own expense; provided, however, that no owner shall be entitled to exer-

cise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the owners and their mortgagees, may realize under any insurance policy which the Association's Board of Directors may have in force on the property at any particular time.

(h) Any owner who obtains an individual insurance policy covering any portion of the property, other than improvements and betterments made by such owner at his expense and personal property belonging to such owner, shall be required to file a copy of each such individual policy with the Association's Board of Directors within 30 days after purchase of such insurance.

(i) It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, title insurance on his individual residence, homeowner's liability insurance, theft and other insurance covering improvements, betterments and personal property damage and loss.

(j) The Association's Board of Directors shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all improvements on the property (with the exception of improvements and betterments made by the respective owners at their expense) by one or more qualified persons at least one of whom should be a qualified building cost estimator.

(k) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following: (1) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its Manager, the owners and their respective servants, agents and guests; (2) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (3) that the master policy on the property cannot be cancelled, invalidated or suspended on account of any one or more individual owners; (4) that the master policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or its duly authorized Manager without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its Manager, any owner or mortgagee; and (5) that any "other insurance" clause in the master policy exclude individual owners' policies from consideration.

Section 2. No Partition. There shall be no judicial partition of the property or any part thereof, nor shall the Declarant or any person acquiring any interest in the property or any part thereof seek any such judicial partition until the happening of the conditions set forth in Section 4 of this Article VIII in the case of damage or destruction or unless the property has been removed from the provisions of the Act as provided for in Article XIII, Section 3, hereof.

Section 3. Insurance Trustee. (a) All insurance policies purchased by and in the name of the Board of Directors of the Association shall provide that proceeds covering property losses shall be paid to the Board of Directors of the Association, as Insurance Trustee.

(b) The duty of the Insurance Trustee shall be to receive such proceeds as are paid and delivered to it and to hold such proceeds in trust for the benefit of the owners and their mortgagees in the following shares, but which shares need not be set forth in the records of the Insurance Trustee. An undivided share of such proceeds on account of damage or destruction to the common areas and facilities shall be held in trust for the owners in accordance with their respective percentages of undivided interest in and to the common areas and facilities as provided for in Article III, Section 3 hereof. Proceeds on account of damage or destruction to residences shall be held in trust for the owners of the damaged or destroyed residences in proportion to the cost of repairing or reconstructing the damage or destruction suffered by each such owner. In the event that a mortgagee endorsement has been issued as to any particular residence, the share of such residence owner shall be held in trust for such owner and his mortgagee as their interests may appear.

(c) Proceeds of insurance policies received by the Insurance Trustee shall be disbursed as follows:

- (1) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, such portion thereof as may be required for such purpose shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying the cost of repairs or reconstruction shall be disbursed to the beneficial owners, remittances to residence owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a residence and may be enforced by such mortgagee.

- (2) If it is determined as provided for in Section 4 of this Article VIII that the damage or destruction for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed to such persons as therein provided.
- (3) The Board of Directors of the Association as Insurance Trustee shall determine whether or not the damage or destruction is to be repaired or reconstructed and whether the damage or destruction was to the common areas and facilities or one or more residences or both. If the damage or destruction is not to be repaired or reconstructed, the disbursements shall be made by the Insurance Trustee in accordance with the terms of Section 4(c) of this Article VIII.

If the damage or destruction is to the common areas and facilities and is to be repaired or reconstructed, the mortgagee known by the Insurance Trustee to have the largest interest in or lien upon such common areas and facilities may direct that disbursements be made by the Insurance Trustee to those persons and in such amounts as may be specified therein or, in the alternative, it may authorize the Insurance Trustee to make disbursements upon and pursuant to such written authorizations as may be submitted to it by an architect or other person named therein as having been employed by the Association to supervise such repairs or reconstruction.

If the damage or destruction is to one or more residences and is to be repaired or reconstructed, the mortgagee or mortgagees, if any, known by the Insurance Trustee to have an interest in or lien upon such residence or residences may direct that disbursements be made by the Insurance Trustee to those persons and in such amounts as may be specified therein or, in the alternative, it may authorize the Insurance Trustee to make disbursements upon and pursuant to such written authorizations as may be submitted to it by an architect or other person named therein as having been employed by the Association to supervise such repairs or reconstruction.

Section 4. Damage and Destruction. (a) Immediately after the damage or destruction by fire or other casualty to all or any part of the property covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance

and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty with each residence and the common areas and facilities having the same vertical and horizontal boundaries as before.

(b) Any such damage or destruction shall be repaired or reconstructed unless at least ninety percent (90%) of the total vote of the Association shall decide within 120 days after the casualty, not to repair or reconstruct. No mortgagee shall have any right to participate in the determination as to whether the damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner prescribed above that the damage or destruction shall not be repaired or reconstructed, then and in that event (1) the property shall be deemed to be owned in common by the residence owners, (2) the undivided interest in the property owned in common which shall appertain to each residence owner shall be the proportion that the value placed on his residence by the Board of Directors for insurance premium assessment purposes bears to the value so placed on all residences for such purposes, (3) any liens affecting any of the residences shall be deemed to be transferred in accordance with the existing priorities to the percentage of undivided interest of the residence owner in the property, and (4) the property shall be subject to an action for partition at the suit of any residence owner, in which event the net proceeds of sale shall be paid to the Insurance Trustee. Said net proceeds of sale, together with the net proceeds of the insurance on the property, shall be considered as one fund which shall be divided among all of the residence owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective share of the residence owners, to the extent sufficient for the purpose, all liens of the undivided interest in the property owned by each residence owner. Disbursements to such owners shall be made as provided for in Section 3 of this Article VIII.

Section 5. Repair and Reconstruction. (a) If the damage or destruction for which the insurance proceeds are paid to the Insurance Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without a vote of the members, levy a special assessment against all owners

of the damaged residences, and against all owners in the case of damage to the common areas and facilities, in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. Such assessments against residence owners for damage to residences shall be in proportion to the cost of repair and reconstruction of their respective residences. Such assessments on account of damage to the common areas and facilities shall be in proportion to the owner's share in the common areas and facilities.

(b) Any and all sums paid to the Association under and by virtue of those special assessments provided for above to defray the estimated excess cost of repair or reconstruction shall be deposited by the Association with the Insurance Trustee. The proceeds from insurance and assessments, if any, received by the Insurance Trustee, when the damage or destruction is to be repaired or reconstructed, shall be disbursed as provided for in Section 3 of this Article VIII.

Section 6. Minor Repairs. (a) Notwithstanding the foregoing provisions of this Article VIII, in the event of damage by fire or other casualty to either the common areas and facilities or a single residence covered by insurance written in the name of the Association and if the insurance proceeds initially offered or paid therefor are less than Five Thousand Dollars (\$5,000.00) and the estimated cost of repairing such damage is less than twice the amount of such proceeds, then the damage shall be repaired in accordance with the following provisions.

(b) If the damage is confined to the common areas and facilities, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the common areas and facilities. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided, either by means of a special assessment levied by the Board of directors, without a vote of the members, against all owners in proportion to each owner's share in the common areas and facilities

or by means of an appropriation from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the common areas and facilities as the Board of Directors in the exercise of its sole discretion may determine.

(c) If the damage is confined to a single residence, such insurance proceeds shall be used by the Association to defray the cost of such repairs. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be paid jointly to the owner and his mortgagee, if any, who may use such proceeds as they alone may determine. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess shall be provided by means of a special assessment levied by the Board of Directors, subject to Article V, Section 4, hereof and without a vote of the members, against the owner of the damaged residence. Payments for repairs provided for in this subparagraph (c) shall be made only after all such repairs have been completed and approved by the Association, the owner and his mortgagee, if any, which approval shall not be unreasonably withheld.

ARTICLE IX

CONDEMNATION

Section 1. General. Whenever all or any part of the property shall be taken by any authority having the power of eminent domain, each owner shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association if such award amounts to less than One Thousand Dollars (\$1,000.00) and to the Insurance Trustee if such award amounts to One Thousand Dollars (\$1,000.00) or more. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association or the Insurance Trustee, as the case may be, as hereinafter provided in this Article IX.

Section 2. Common Areas and Facilities. If the taking is confined to the common areas and facilities on which improvements shall have been constructed and if at least ninety percent (90%) of the total vote of the Association shall decide within 120 days after such taking

to replace said improvements, or any part thereof, on the remaining land included in the common areas and facilities and according to plans therefor first approved by the Association, then the Board of Directors shall arrange for such replacement and the Association or the Insurance Trustee, as the case may be, shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the common areas and facilities is to be repaired or reconstructed, as provided for in Article VIII hereof; subject, however, to the right hereby reserved to the Association and to be exercised by a majority of the total vote thereof to provide for the disbursement by the Insurance Trustee of the remaining proceeds held by it (after payment of all costs incident to such replacement) to the owners or any one or more of them in amounts disproportionate to their percentages of undivided interest in the common areas and facilities as established herein, which disproportionate amounts shall correspond with the disproportionate damages sustained by the owners or any one or more of them as the Association may determine by a majority of the total vote thereof. If at least ninety percent (90%) of the total vote of the Association shall not decide within 120 days after such taking to replace such improvements or if the taking is confined to the common areas and facilities on which no improvements shall have been constructed, then the Association or the Insurance Trustee, as the case may be, shall disburse the proceeds of the award in the manner hereinabove provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken, including the right reserved to the Association to provide for the disbursement by the Insurance Trustee of the remaining proceeds held by it to the owners in disproportionate amounts.

Section 3. Residences. If the taking includes one or more residences, or any part or parts thereof, whether or not there is included in the taking any part of the common areas and facilities, then the award shall be disbursed and all related matters, including without limitation alteration of the percentages of undivided interest of the owners in the common areas and facilities shall be handled pursuant to and in accordance with the consent of all owners (or such lesser number of owners as may then be prescribed by the Act for the purpose of altering the percentages of undivided interest of the owners in the common areas and facilities) expressed in a duly recorded amendment to this Declaration. In the event that such an amendment shall not be recorded within 120 days after such taking, then such taking shall be deemed to be and shall be treated as damage or destruction which shall not be repaired

or reconstructed as provided for in Article VIII, Section 4, hereof, whereupon the development will be terminated in the manner therein prescribed, unless then otherwise provided by law.

ARTICLE X

USE RESTRICTIONS

Section 1. Residential Purposes. All residences contemplated in the development shall be, and the same hereby are, restricted exclusively to residential use. No structures of a temporary character, trailer, basement, tent, shack, carport, garage, barn or other out-building shall be used as a residence on any portion of the property at any time either temporarily or permanently.

Section 2. Estate in Fee Simple. Each residence shall be conveyed as a separately designated and legally described estate in fee simple subject to the terms, conditions and provisions hereof and of the Act.

Section 3. Construction and Sale Period. Notwithstanding any provisions contained herein to the contrary, it shall be expressly permissible for the Declarant or the builder of said residences to maintain, during the period of construction and sale of said residences, upon such portion of the property as the Declarant may deem necessary, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale of said residences, including, but without limitation, storage areas, construction yards, signs, model residences, construction offices, sales offices and business offices.

Section 4. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of the property, except that dogs, cats or other household pets may be kept by the respective owners in their respective residences provided that they are not kept, bred or maintained for any commercial purpose and do not endanger the health or, in the sole discretion of the Association's Board of Directors, unreasonably disturb the owner of any residence or any resident thereof.

Section 5. Signs and Business Activities. No signs, advertising or otherwise, billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the property, nor shall the property be used in any way or for any purpose which may endanger the health of or unreasonably disturb the owner of any residence or any resident thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of the property; provided, however, the foregoing covenants shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns during the construction and sale period, or of any resident manager thereafter.

Section 6. Clotheslines, Garbage Cans, Etc. All clotheslines, equipment, garbage cans, service yards, woodpiles and storage piles shall be kept within the owner's area so provided by Declarant for same, screened by adequate planting or fencing so as to conceal them from view of neighboring residences and streets. All rubbish, trash and garbage shall be regularly removed from the premises and shall not be allowed to accumulate thereon. All clotheslines shall be confined within the patio areas.

Section 7. Patios and Other Common Areas. Except in the individual enclosed patio portion of a residence, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Board of Directors or their designated representatives. Except for the right of ingress and egress, the owners of residences are hereby prohibited and restricted from using any of said property outside of their respective residences and the patios and other limited common areas and facilities appurtenant thereto, except as may be allowed by the Association's Board of Directors or as expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners in the development and is necessary for the protection of said owners.

Section 8. Exterior Antennas. No exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the property nor upon

any structure situated upon the property other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 9. Leasing of Residences. Entire residences may be rented provided the occupancy is for not less than twelve (12) months and such occupancy is only by the lessee and his immediate family or as may be approved or otherwise provided for by the Association's Board of Directors. No room may be rented and no transient tenants accommodated. This Section 9 shall not apply, however, to any lease or leases which may be entered into by the Declarant.

ARTICLE XI

SALES, LEASES AND MORTGAGES

Section 1. Sales and Leases: Right of First Refusal. In order to assure a community of congenial owners and thus protect the value of the residences, the sale, leasing and mortgaging of residences by any owner other than the Declarant shall be subject to the following provisions so long as the property shall be owned in accordance with the terms and conditions of this Declaration and the Act.

(a) Notice to Association. A residence owner intending to make a bona fide sale or a bona fide lease of his residence shall give notice in writing to the Association's Board of Directors of such intention, together with the name and address of the intended purchaser or lessee, the terms of the proposed transaction and such other information as the Board may reasonably require.

(b) Alternatives of Association. Within 30 days after receipt of such notice, the Association's Board of Directors may (1) approve the transaction in writing, (2) fail to respond in which event the transaction will be deemed approved, (3) notify the seller or lessor in writing that the Association will furnish a purchaser or lessee approved by the Board of Directors who will accept the transaction upon terms as favorable to the seller or lessor as the terms stated in the notice, except that a purchaser or lessee furnished by the Association may have 30 days subsequent to the date of such notice within which to close the transaction, (4) notify the seller or lessor in writing that

the Association will purchase or lease upon the same terms and conditions upon which the owner proposes to sell or lease, in which event the sale or lease shall be closed in accordance with said terms.

(c) No Waiver. Approval by the Association's Board of Directors of any sale or lease shall not constitute or be deemed to be a waiver of the necessity for such consent or approval to any further conveyance or lease or to any assignment or subletting of any previously approved leasing. The approval by the Board shall be in recordable form and shall be delivered to the purchaser or lessee and recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

(d) Sale by Mortgagee. Should the residence of any owner become subject to a first mortgagee to secure debt as security in good faith or for value, the holder thereof upon becoming the owner of such interest through whatever means, or the seller at any sale under a power of sale therein contained, shall have the unqualified right to sell, lease or otherwise dispose of said interest and the fee ownership of said residence, without offer to the Association, notwithstanding the above provisions, but the seller shall otherwise sell and the purchaser or lessee shall take subject to the Declaration and By-Laws.

Section 2. Mortgaging. Any owner may mortgage his residence and all interest therein to his former owner, a bank, an insurance company, a federal or Kansas savings and loan association or a corporation or partnership acting as a mortgage broker whose primary interest in making any such mortgage is the placement and servicing of same with and on behalf of one of such other aforesaid qualified lending institutions. The existence of a "permanent commitment" from any such lending institution to purchase any such mortgage from such mortgage broker shall be conclusive evidence of such mortgage broker's intent to place any such mortgage with one of such other lending institutions whether or not such commitment is ultimately fulfilled. A mortgage to any lending institution other than described above shall require the prior approval of the Association's Board of Directors, which approval may be upon conditions determined by the Board of Directors or may be arbitrarily withheld.

Section 3. Void Transactions. Any sale, mortgage or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association's Board of Directors.

Section 4. Exemption from Restrictions. The foregoing restrictions against selling, leasing and mortgaging of residences as set forth in this Article XI shall not apply to the holder of any promissory note secured in whole or in part by a duly executed and recorded mortgage to secure debt, security deed, loan deed or other similar instrument which creates a lien on such portion of the property as may be owned by the Declarant at any particular time, nor to any purchaser of one or more residences at a foreclosure of any such instrument or at a sale of one or more residences under power contained in any such instrument, nor to any other person who purchases such residence or residences from the purchaser at foreclosure or at sale under power except to ultimate purchasers of individual residences who occupy the same.

Section 5. Further Provisions for Protection of Mortgagees.
Notwithstanding any other provisions hereof:

(a) The holder of any mortgage shall be entitled to written notification from the Association at least thirty days prior to the effective date of (i) any change in the condominium documents and (ii) any change of manager (not including change in employees of corporate manager) of the condominium project.

(b) The holder of any mortgage shall be entitled to written notification from the Association of any default by its mortgagor in the performance of the mortgagor's obligations under the condominium documents which is not cured within thirty days.

(c) Unless all holders of first mortgage liens on individual residences have given their prior written approval, the Association shall not:

- (i) fail to employ a professional manager for the condominium project;
- (ii) change the pro rata interest or obligations of any residence for purposes of levying assessments and charges and determining shares of the common areas and facilities and proceeds of the project;
- (iii) partition or subdivide any residence or the common areas and facilities of the project; nor
- (iv) by act or omission seek to abandon the condominium status of the project except as provided by statute in case of substantial loss to the residences and common areas and facilities of the condominium project.

ARTICLE XII

EASEMENTS

Section 1. Enjoyment of Common Areas and Facilities. Every owner shall have a right and easement of enjoyment in and to the unlimited common areas and facilities (as distinguished from limited common areas and facilities) and such easement shall be appurtenant to and shall pass with the title to every residence, subject to the following provisions: (a) the right of the Association's Board of Directors to limit the number of guests that may use the common areas and facilities, (b) the right of the Association's Board of Directors to charge reasonable admission and other fees for the use of any recreational facilities situated upon the common areas and facilities; and (c) the right of the Association's Board of Directors to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his residence remains unpaid, and for a period not to exceed 30 days for any infraction of its published rules and regulations. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the common areas and facilities to the members of his family or his tenants who reside on the property.

Section 2. Encroachments and Support. Each residence and the property included in the common areas and facilities shall be subject to an easement for encroachments created by construction, settling and overhangs as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as they stand, shall and does exist. In the event that any building is partially or totally destroyed and then rebuilt, the owners of the residences so affected agree that minor encroachments of parts of the adjacent residence or common area due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist. Every portion of a residence contributing to the support of an abutting residence shall be burdened with an easement of support for the benefit of such abutting residence. Also, a valid easement shall and does exist in favor of each owner to make reasonable use, not inconsistent with the terms of this Declaration, of the exterior wall of any adjoining residence where the outer surface of such wall shall serve and separate any portion of such owner's residence or limited common areas and facilities appertaining thereto and such adjoining residence notwithstanding the inclusion of such wall within the vertical boundaries of such adjoining residence.

Section 3. Utilities, Etc. There is hereby granted a blanket easement upon, across, over and under all of the property for ingress, egress, installation, replacing, repairing and maintaining a master television antenna system and all utilities including, but not limited to, water, sewers, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain utility wires,

circuits and conduits on, above, across and under the roofs and exterior walls of the residences. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said property except as initially programed and approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Declarant shall have the right to grant such easement on said property without conflicting with the terms hereof. The easements provided for in this Article XII shall in no way affect any other recorded easement on said property.

Section 4. Other. There is hereby granted a blanket easement to the Association, its directors, officers, agents and employees, to any Manager employed by or on behalf of the Association and to all policemen, firemen, ambulance personnel and all similar persons to enter upon the property or any part thereof in the proper performance of their respective duties. Except in the event of emergencies, the rights accompanying the easements provided for in this Article XII shall be exercised only during reasonable daylight hours and then, whenever practicable, only after advance notice to and with the permission of the owner or owners directly affected thereby.

ARTICLE XIII

GENERAL PROVISIONS

Section 1. Amendment: By Declarant. Amendments to this Declaration for the purpose of further identifying the residences contemplated in the development shall be made as and when the construction of each of the buildings is completed. Amendment to this Declaration for the purpose of submitting Phase II and Phase III property to the provisions of this Declaration may be made pursuant to Article III, Section 1, hereof. Each such amendment shall be approved by the Declarant and filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, at which time the same shall become effective. Other amendments which are authorized by this Declaration and the Act and made prior to the date on which the Declarant delivers management of the development to the Association shall become effective when approved and recorded in the manner hereinabove provided; provided, however, that such amendments shall not affect materially any rights of any then existing mortgage holders or residence owners. In the event that such an amendment does affect materially any rights of any then existing mortgage holders or residence owners, the amendment shall be valid only upon the written consent thereto of all of the then existing mortgage holders and a majority of the then existing residence owners. Such amendment shall be certified by the Declarant as having been duly approved and shall be effective when recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

Section 2. Amendment: Other. Amendments to this Declaration, other than those provided for in Section 1 of this Article XIII, which are authorized by this Declaration and the Act, shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.

(b) Resolution. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the membership of the Association, and after being proposed and approved by one of such bodies it must be approved by the other. Directors and members not present at the meetings considering the amendment may express their approval in writing. Such approvals must be by all of the Directors and, unless otherwise specified in this Declaration or the Act, by not less than seventy-five percent (75%) of the total vote of the Association; provided, however, that in the event the proposed amendment should affect materially any rights of any then existing mortgage holders, such amendment shall also require the written consent thereto of all of the then existing mortgage holders, and, provided further, that if the Association shall vote to amend the By-Laws in any respect, such By-Laws amendment shall be set forth in an amendment to this Declaration as required by the Act, and such amendment to this Declaration shall be valid when approved by a majority of the total vote of the Association.

(c) Recording. A copy of each amendment provided for in this Section 2 shall be certified by the Board of Directors of the Association as having been duly adopted and shall be effective when filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas.

Section 3. Termination. The development shall be terminated and the property removed from the provisions of the Act in the following manner:

(a) Agreement. All of the residence owners may remove the property from the provisions of the Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the residences consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the percentage of undivided interest of the residence owner in the property.

(b) Destruction. In the event it is determined in the manner provided in Article VIII, Section 4, hereof, that the property shall not be repaired or reconstructed after casualty, the development

will be terminated and the development documents revoked pursuant to Article VIII, Section 4(c) hereof, unless then otherwise provided by law. The determination not to repair or reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

(c) Condemnation. In the event that one or more residences, or any part or parts thereof, shall be taken by any authority having the power of eminent domain and the consent of all owners (or such lesser number of owners as may then be prescribed by the Act for the purpose of altering the percentages of undivided interest of the owners in the common areas and facilities) shall not be expressed in an amendment to this Declaration duly recorded within 120 days after such taking as provided for in Article IX, Section 3, hereof, the development will be terminated and the development documents revoked pursuant to Article VIII, Section 4(c) hereof, unless then otherwise provided by law. Such taking shall be evidenced by a certificate of the Association certifying as to facts effecting the termination, which certificate shall become effective upon being recorded in the Office of the Register of Deeds, Sedgwick County, Kansas.

(d) Ownership After Termination. After termination of the development, the rights of the residence owners and their respective mortgagees and lienees shall be determined in the manner provided in Article VIII, Section 4 hereof.

Section 4. Covenants Running With the Land. All provisions of this Declaration shall be construed to be covenants running with the land, and with every part thereof and interest therein, including, but not limited to, every residence and the appurtenances thereto; and every residence owner and claimant of the land or any part thereof or interest therein, and his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of this Declaration.

Section 5. Deeds. The deeds by which the Declarant will describe and convey the residences shall be substantially in the form attached hereto as Exhibit "D" and, by reference, made a part hereof. Any transfer of a residence shall include all appurtenances thereto whether or not specifically described, including, but not limited to, the owner's

membership in the Association and his percentage of undivided interest in the common areas and facilities and in the funds and assets held by the Association.

Section 6. Adjoining Property to North. Adjoining Leisure Living First Addition to the north is property under long-term lease to the Wichita Racquet Club, Inc., which said leased property is legally described as "Ruby J. Addition, Sedgwick County, Kansas. Declarant has been informed of the long-range development plans of Wichita Racquet Club, Inc., which plans encompass the following:

"Installation of fully lighted outdoor courts between the indoor facility and Leisure Living First Addition, with outdoor tennis pro shop, additional parking, and outdoor swimming pool; additional landscaping and planting of trees; possible installation of two additional indoor courts extending west from the existing indoor tennis facility; and possible additional enlargement of the indoor facility to the east."

Declarant has heretofore agreed with the Wichita Racquet Club, Inc., that Declarant will not object to the further development and use of the Wichita Racquet Club property as above outlined, or development and use in substantial conformity therewith, and all future owners, lessees and/or occupants of any residence in this condominium development, and their successors and assigns, by acceptance of deeds and/or leases to said residences and/or by entering possession of said residences, likewise covenant that they will not object to said development and agree that said acceptance shall constitute and be tantamount to a written consent to said future development of the Wichita Racquet Club, Inc., property.

Section 7. Maintenance of Open Spaces in Event of Association's Failure to do so. Upon the failure of the Association to properly and adequately maintain any part of the open space within the condominium development, the City of Wichita may cause notice to be served on the Association of its failure to so maintain, setting out the manner in which it has failed to perform, and granting it ten days within which to perform all of the items designated in said notice. After said ten days the City may enter upon the property to perform the work described in said notice of deficiency, and the cost of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Association, upon receipt of said notice, take exception to any deficiencies designated therein, the Association may within the ten-day period appeal to the Board of City Commissioners for a hearing on the propriety of the contents of said notice, and until said appeal is heard and determined the matter shall be stayed.

Section 8. By-Laws. A true copy of the By-Laws of the Association, which shall (as from time to time validly amended) together with this Declaration and the Act govern the administration of the development, is attached hereto as Exhibit "B" and, by reference, made a part hereof.

Section 9. Enforcement. Each owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his residence. Failure to comply with any of the same shall be grounds for an action to recover sums due, for damages or injunctive relief or both maintainable by the Board of Directors on behalf of the Association or, in a proper case, by an aggrieved owner. Failure by the Association or any owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter.

Section 10. Severability. Invalidation of any covenant, condition, restriction or other provision of this Declaration on the By-Laws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 11. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 12. Agent for Service of Process. The Declarant hereby designates Willard B. Thompson of Fleeson, Goings, Coulson & Kitch, 1600 Vickers-KSB&T Building, Wichita, Sedgwick County, Kansas, 67202, to receive service of process in the cases provided for in the Act.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 9th day of Oct., 1972.

ATTEST:

Robert T. Heath
Secretary

LEISURE LIVING, INC.

By

V. Eric Anderson
President

"DECLARANT"

STATE OF KANSAS)
) SS
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this 9th day of October, 1972, before me, the undersigned, a Notary Public, duly commissioned, in and for the county and state aforesaid, came N. LEE ARONFELD, President of LEISURE LIVING, INC., a corporation of the State of Kansas, personally known to me to be such officer, and to be the same person who executed as such officer the foregoing instrument of writing in behalf of said corporation, and he duly acknowledged the execution of the same for himself and for said corporation for the uses and purposes therein set forth.

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

Robin Blood
Notary Public

My commission expires: My Commission Expires July 1, 1975



LEISURE LIVING FIRST ADDITION, Wichita, Sedgwick County, Kansas,
 according to the recorded Plat thereof and being also legally de-
 scribed as:

The South 600 feet of the East Half of the Southeast
 Quarter of the Southeast Quarter (E/2 SE/4 SE/4) of
 Section 7, Township 27 South, Range 2 East, of the 6th
 P.M., except the South 225 feet of the East 250 feet
 thereof.

<u>Residence No.</u>	<u>(a)</u>	<u>(b)</u>	<u>(c)</u>
1	12.500	4.1666	1.5384
2	12.500	4.1666	1.5384
3	12.500	4.1666	1.5384
4	12.500	4.1666	1.5384
5	12.500	4.1666	1.5384
6	12.500	4.1666	1.5384
7	12.500	4.1666	1.5384
8	12.500	4.1666	1.5384
9	-	4.1667	1.5384
10	-	4.1667	1.5384
11	-	4.1667	1.5384
12	-	4.1667	1.5384
13	-	4.1667	1.5384
14	-	4.1667	1.5384
15	-	4.1667	1.5384
16	-	4.1667	1.5384
17	-	4.1667	1.5384
18	-	4.1667	1.5384
19	-	4.1667	1.5384
20	-	4.1667	1.5384
21	-	4.1667	1.5384
22	-	4.1667	1.5384
23	-	4.1667	1.5384
24	-	4.1667	1.5384
25	-	-	1.5384
26	-	-	1.5385
27	-	-	1.5385
28	-	-	1.5385
29	-	-	1.5385
30	-	-	1.5385
31	-	-	1.5385
32	-	-	1.5385

<u>Residence No.</u>	<u>(a)</u>	<u>(b)</u>	<u>(c)</u>
33	-	-	1.5385
34	-	-	1.5385
35	-	-	1.5385
36	-	-	1.5385
37	-	-	1.5385
38	-	-	1.5385
39	-	-	1.5385
40	-	-	1.5385
41	-	-	1.5385
42	-	-	1.5385
43	-	-	1.5385
44	-	-	1.5385
45	-	-	1.5385
46	-	-	1.5385
47	-	-	1.5385
48	-	-	1.5385
49	-	-	1.5385
50	-	-	1.5385
51	-	-	1.5385
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54	-	-	1.5385
55	-	-	1.5385
56	-	-	1.5385
57	-	-	1.5385
58	-	-	1.5385
59	-	-	1.5385
60	-	-	1.5385
61	-	-	1.5385
62	-	-	1.5385
63	-	-	1.5385
64	-	-	1.5385
65	-	-	1.5385
	<u>100.0000</u>	<u>100.0000</u>	<u>100.0000</u>

Column "(a)" above denotes the percentage of undivided interest in the common area appurtenant to each residence constructed or to be constructed within Phase I during such time as Phase I only is subject to this Declaration.

Column "(b)" above denotes the percentage of undivided interest in the common area appurtenant to each residence constructed or to be constructed within Phases I and II during such time, if any, as Phases I and II only are subject to this Declaration.

Column "(c)" above denotes the percentage of undivided interest in the common area appurtenant to each residence constructed or to be constructed within Phases I, II and III during such time, if any, as Phases I, II and III are subject to this Declaration.

NOTE: The percentages of undivided interest in the common area appurtenant to each residence now or hereafter made subject to this Declaration is based on relative values arbitrarily assigned by the Declarant to each such residence solely for this purpose. The value thus assigned to each such residence is \$50,000 and, therefore, the aggregate of all such values is: \$400,000 as to Phase I only; \$1,200,000 as to Phases I and II; and \$3,250,000 as to Phases I, II and III. Such values do not necessarily reflect or represent the selling price or actual value of any such residence and no opinion, appraisal, sale or market value transaction at a greater or lesser price than the assigned value recited herein shall be interpreted as requiring or permitting any change in the percentages of undivided interest assigned herein.

IRREVOCABLE LETTER OF CREDIT
THE FOURTH NATIONAL BANK AND
TRUST COMPANY, WICHITA, KANSAS
(Name of bank)

Date: September 28, 1972

THE CITY OF WICHITA
WICHITA, KANSAS

Dear Sirs:

We hereby open our irrevocable credit in your favor available by your drafts at sight on us for a sum not exceeding \$ 24,000.00 for the account of Leisure Living, Inc.

(PURCHASER), to be accepted by your signed statement that drawing is due to default or failure to perform by PURCHASER, the following improvements on or before March 8, 1975
(Insert date two years from MAPC approval of plat)

1. Extension of 16" Main line in 13th Street, from Governour Road to a point 250' West of the centerline of Rock Road.

2.

3.

in Leisure Living First Addition, a subdivision of the City of Wichita, Kansas.

Acting through the City Engineer, you will notify us when either:

1. The improvements have been timely completed and the credit may be released, or
2. The purchaser has failed to perform or is in default hereunder.

All drafts drawn hereunder must be marked: "Drawn under The Fourth National Bank & Trust Co., Wichita credit No. 348, dated September 28, 1972.
(Name of bank)

The amount of any draft drawn under this credit must, concurrently with negotiation, be endorsed on the reverse side hereof and the presentment of any such draft shall be a warranty by the negotiating bank that such endorsement has been made and that documents have been forwarded as herein required.

Except so far as otherwise expressly stated herein, this credit is subject to the uniform customs and practices for commercial documentary credits fixed by the 13th Congress of the International Chamber of Commerce.

We hereby agree with the drawers, endorsers and bona fide holders of drafts under and in compliance with the terms of this credit that the same shall be duly honored on due presentation and delivery of documents as specified if negotiated on or before March 8, 1975.

(CORPORATE SEAL)



Very truly yours,
THE FOURTH NATIONAL BANK & TRUST CO., WICHITA
WICHITA, KANSAS
(Name of bank)

By: Shel D. Stephens
(Authorized signature)

KAHRS, NELSON, FANNING, HITE & KELLOGG
ATTORNEYS AT LAW

SUITE 630 - 200 WEST DOUGLAS AVENUE
WICHITA, KANSAS 67202

September 9, 1972

AREA 316
262-3777

AUSTIN M. COWAN (1888-1948)
W.A. KAHRS
ROBERT H. NELSON
H.W. FANNING
RICHARD C. HITE
DARRELL D. KELLOGG
ROGER M. SHERWOOD
RICHARD L. HONEYMAN
LARRY A. WITHERS
GARY A. WINFREY

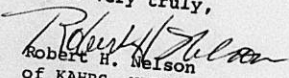
Metropolitan Area Planning Commission
City Annex Building
Wichita, Kansas 67202

Gentlemen:

Re: S/D 72-77 - Final Plat of Leisure Living
First Addition - 13th and Rock Road

Enclosed herewith is my only copy of the Declaration of Covenants, Conditions and Restrictions for The Heritage also known as the Leisure Living, Inc. a Kansas corporation. This is in compliance with a staff comment E on the greensheet relative to the above plat.

Yours very truly,


Robert H. Nelson
of KAHRS, NELSON, FANNING, HITE & KELLOGG

RHN:t
Enc.
cc:

Mr. Lee Aronfeld
Leisure Living, Inc.



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
THE HERITAGE

KNOW ALL MEN BY THESE PRESENTS, that this Declaration, made on the date hereinafter set forth by LEISURE LIVING, INC., a Kansas corporation (hereinafter called the "Declarant");

WITNESSETH, THAT:

WHEREAS, Declarant is the owner of all those tracts and parcels of land known as "Leisure Living First Addition, Wichita, Sedgwick County, Kansas", according to the recorded plat thereof, and also described as:

The South 600 feet of the East Half of the Southeast Quarter of the Southeast Quarter (E/2 SE/4 SE/4) of Section 7, Township 27 South, Range 2 East of the 6th P.M., except the South 225 feet of the East 250 feet thereof;

and

WHEREAS, Exhibit "A" hereto attached is a reproduction of the final recorded plat of Leisure Living First Addition, Wichita, Sedgwick County, Kansas, supplemented however by lines of demarcation superimposed by Declarant showing said addition to contain three phases denominated "Phase I", "Phase II", and "Phase III"; and

WHEREAS, Declarant will convey the property described as Phase I in Exhibit "A" subject to the protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth; and

WHEREAS, Declarant retains the sole and exclusive right to later submit to the provisions of this Declaration the property described in Exhibit "A" as Phase II and Phase III, together with all improvements then constructed or to be constructed thereon.

NOW, THEREFORE, Declarant does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the property described as Phase I in said Exhibit "A" to the condominium form of ownership as provided by Kansas law. Said Phase I property shall be held, sold and conveyed subject to the following covenants, condi-



(g) Description of limited common areas, if any, stating to which residence(s) their use is reserved.

The description of the land on which the improvements are to be located is reflected in Exhibit "A" attached hereto.

Section 10. Development Documents means those documents by means of which The Heritage will be established as a condominium consisting of (a) this Declaration of Covenants, Conditions and Restrictions, (b) the By-Laws of the Association, and (c) the deeds by means of which Declarant will convey particular residences to the purchasers thereof.

Section 11. Majority or Majority of Owners means the owners with fifty-one percent (51%) or more of the votes in accordance with the percentages assigned in this Declaration for voting purposes.

Section 12. Owner means the record owner, whether one or more persons, of a fee simple title to any residence which is a part of the property and an undivided interest in the fee simple estate of the common areas and facilities excluding, however, those persons having such interest merely as security for the performance of an obligation. The Declarant is included within the meaning of said term so long as it is a record owner as herein provided.

Section 13. Person means an individual, corporation, partnership, association, trustee or other legal entity.

Section 14. Phase I Property means all that tract or parcel of land described as Phase I in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 15. Phase II Property means all that tract or parcel of land described as Phase II in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 16. Phase III Property means all that tract or parcel of land described as Phase III in Exhibit "A" attached hereto and, by reference, made a part hereof.

Section 17. Property, unless the context should otherwise require, means all those tracts or parcels of land described in Exhibit

"A" attached hereto and, by reference, made a part hereof, now or hereafter submitted to the provisions of the act by means of this Declaration or any duly authorized amendment hereof.

Section 18. Residence means a single family residential unit constructed or to be constructed as part of a residential building which contains two or more of such single family residential units. As used herein, the term "residence" shall be synonymous with such other terms, if any, which may be used to describe said units such as "townhouse", "apartment", "villa", "flat", "dwelling", etc.

Section 19. Residence Number means the number, letter, or combination thereof designating a residence in the development documents, the master plot plan or the supplemental plats.

Section 20. The Heritage means the entire undertaking pursuant to the development documents which shall commence with the filing of this Declaration for record in the Office of the Register of Deeds, Sedgwick County, Kansas, and shall continue thereafter until terminated as provided for herein.

ARTICLE II

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every person who is the record owner of a fee or undivided fee interest in any residence which is a part of the property which is or may become subject by covenants of record to assessment by the Association shall be a member of the Association. Included as a member of the Association is the Declarant so long as it is a record owner as herein provided. The foregoing is not intended to include persons who hold an interest merely as security for the performance of an obligation. No owner, whether one or more persons, shall have more than one membership per residence. Membership shall be appurtenant to and may not be separated from ownership of any residence. Ownership of a residence shall be the sole qualification for membership.

which may be determined by the Declarant on the basis of its marketing experience to be unpopular and by substituting in lieu thereof another type of residence the architectural floor plans of which shall have been filed for record as hereinabove provided; provided, however, that no change shall be made or permitted in the total number of residences contemplated, within any particular phase, in the total number of residences contemplated within any particular building, in the principal materials of construction or in the general architectural design and appearance. As and when the construction of each of said buildings is completed and prior to the first conveyance of a residence contained therein there will be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, an amendment to this Declaration to which shall be attached a verified statement of a registered architect or licensed professional engineer certifying that the brochure and plan and specifications theretofore filed of record, together with such amendments and modifications (if any) as are reflected in the supplemental brochure and plans and specifications, if any, being filed of record simultaneously with said amendment, fully and accurately depict the buildings and residences described in said amendment as built. Said amendments to this Declaration, together with the brochure and plans and specifications filed prior thereto and such supplemental brochure and plans and specifications, if any, filed simultaneously with said amendments, shall describe in their entirety the buildings and residences contained therein including the number of stories and basements, the number of residences contained in each building, the principal materials of which the buildings and residences are constructed, the approximate area of each residence, the number of rooms, immediate common area to which it has access and such other data as may be necessary for its proper identification. All of the property, except that on which residences shall have been constructed as evidenced by said brochures and plans and specifications as shall have been filed of record, shall be common areas and facilities.

(b) Option to Submit Phase II Property. Declarant hereby reserves unto itself the option, to be exercised at its sole discretion, to submit the Phase II property to the provisions of this Declaration and thereby cause said Phase II property to be and become a part of The Heritage. This option may be exercised by the Declarant only upon the execution by it of an amendment to this Declaration which shall be filed for record in the Office of the Register of Deeds, Sedgwick County, Kansas, not later than one year from the date hereof.

as any other real property, subject to the provisions of this Declaration. Each owner shall be entitled to the exclusive ownership and possession of his residence, subject to the provisions of the Act, the By-Laws of the Association and this Declaration. Each residence shall include all of the space within the boundaries thereof. There shall be no horizontal boundaries. The vertical boundaries, however, shall be the outer surfaces of all exterior walls and the center line of all party walls as shown on the brochures and plans and specifications which shall be on file with the Register of Deeds, Sedgwick County, Kansas; provided, however, that all attachments to the exterior walls of a residence which are a part thereof, which protrude beyond said boundaries and which were constructed in conformity with the architectural plans and specifications, shall be deemed to be included within said boundaries. Each owner of a residence, by acceptance of a deed therefor, agrees that he has had full opportunity to inspect and examine the residence thus acquired by him and waives any claim or demand which he might otherwise have had against the Declarant or any other person whomsoever as a result of any discrepancy between the residence as it then exists and as it is described in this Declaration, and in the above described brochures and plans and specifications. The ownership of each residence shall include, and there shall pass with each residence as appurtenances thereto whether or not separately described, all of the right, title and interest of a residence owner in the property, which shall include but not be limited to an undivided interest in the common areas and facilities, membership in the Association and an undivided interest in the funds and assets held by the Association.

Section 3. Common Areas and Facilities. Ownership of the common areas and facilities shall be by the owners as tenants in common. The percentage of undivided interest of each owner in and to the common areas and facilities at any particular time shall be as set forth in Exhibit "C" attached hereto and, by reference, made a part hereof. Declarant's percentage of undivided interest in and to the common areas and facilities at any particular time shall be the percentage derived by subtracting from "100" percentum the total at said time of the percentages of all other residence owners. The percentages of undivided interest of the owners as defined in this Declaration may be altered only by the consent of all owners (or such lesser number of owners as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration, provided however, that each owner of a residence,

by acceptance of a deed therefor, consents and agrees to the alteration of said percentages in accordance with and as provided for in said Exhibit "C" at such time or times, if any, as the Phase II property and/or the Phase III property is submitted by the Declarant to the provisions of this Declaration as provided for in Section 1 of this Article III and, in furtherance thereof, each such owner irrevocably appoints the Declarant as his attorney in fact for the purpose of further evidencing such consent and agreement should the Declarant determine same to be necessary or desirable. The percentage of undivided interest of each owner in the common areas and facilities is appurtenant to the residence owned by him. No appurtenance may be separated from the residence to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the residence whether or not expressly mentioned or described in a conveyance or other instrument describing the residence. The common areas and facilities shall remain undivided and no owner nor any other person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act and Article VIII, Section 4, hereof. Each owner and the Association may use the common areas and facilities for the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of the other owners.

Section 4. Limited Common Areas and Facilities. Ownership of each residence shall entitle the owner or owners thereof to the exclusive use of such portions of the common areas and facilities as may be designated on the brochures and plans and specifications provided for in Section 1 of this Article III by the same number, letter or combination thereof as may be used to designate the residence to which such portions of the common areas and facilities appertain, together with the right of ingress and egress in and upon such portions of the common areas and facilities.

ARTICLE IV

ARCHITECTURAL CONTROL

Section 1. Approval Required for Changes. No construction of any nature whatsoever shall be commenced or maintained upon any particular residence or the limited common areas and facilities appertaining thereto after the purchase of such residence from the Declarant, its successors or assigns, nor shall any exterior addition to or change

THE CITY OF WICHITA
OFFICE OF Fire Department

DATE September 26, 1972



TO Mr. John Gist - Metropolitan Planning Dept.
FROM R. R. McClintock, Deputy Chief - Operations

SUBJECT Final Plat of Leisure Living
First Addition S/D 72-77

John:

This letter is to advise you that the proposed plans for fire lanes and/or private drives in Leisure Living First Addition have been reviewed and approved as per Fire Department request.

Plans were reviewed by myself with Engineer Thomas R. Gossen representing leisure living.

R. R. McClintock
R. R. McClintock
Deputy Chief
Operations

RRM:ew
cc: Clyde Pellett, Plans Examiner
Thomas R. Gossen P.E.
Suite 707, Brown Bldg, City



KAHRS, NELSON, FANNING, HITE & KELLOGG

ATTORNEYS AT LAW

AUSTIN M. COWAN (1988-1949)

W. A. KAHRS

ROBERT H. NELSON

H. W. FANNING

RICHARD C. HITE

DARRELL D. KELLOGG

ROGER M. SHERWOOD

RICHARD L. HONEYMAN

LARRY A. WITHERS

GARY A. WINFREY

SUITE 630 - 200 WEST DOUGLAS AVENUE

WICHITA, KANSAS 67202

September 15, 1972

AREA 316

262-3777

Metropolitan Area Planning Commission
City Building Annex
104 South Main
Wichita, Kansas 67202

Attention: Mr. Curtis Newby

Re: S/D 72-77 Leisure Living First Addition

Gentlemen:

The title to the property in the above plat is vested in Leisure Living Inc. subject to a mortgage to the Wichita State Bank filed of record on June 9, 1972 in book 18 and page 1467.

I base my opinion on a title policy issued by the Chicago Title Company, Policy 17350408341 and a check at the office of Security Abstract Company, Wichita, Kansas on the 14th day of September, 1972.

Taxes for the year 1971 and prior years have been paid in full.

Yours very truly,



Robert H. Nelson

KAHRS, NELSON, FANNING, HITE & KELLOGG

c.c. Don Moehring, CE
Leisure Living Inc., Attention: Mr. Aronfeld
Security Abstract and Title Inc., Attention: Mr. Roger Bell



September 15, 1972

Mr. Don C. Moehring
314 Brown Building
Wichita, Kansas 67202

Re: S/D 72-77 - Final Plat
of LEISURE LIVING FIRST
ADDITION

Dear Mr. Moehring:

At the regular meeting of the Metropolitan Area Planning Commission on September 14, 1972, the above-captioned plat was considered. The action of the Planning Commission was to recommend that the plat be approved as recommended by the Subdivision Committee, subject to the conditions stated in our letter of September 11, 1972.

In addition to complying with those conditions, it is necessary that you meet the following requirements before this plat can be forwarded to the Board of City Commissioners for consideration:

1. Compliance with the requirements of the Metropolitan Area Planning Commission.
- JH* Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.
- JH* Certification by an attorney that fee title is vested in the platator.
- JH* Certification that all taxes due and payable for 1971 and prior years have been paid.

If you have any questions concerning this matter, please call our office.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

cc: Leisure Living, Inc., 5900 East Central 67208
Robert H. Nelson, Attorney, 200 West Douglas 67202

September 11, 1972

Don C. Moehring
314 Brown Building
Wichita, Kansas 67202

Subject: S/D 72-77 - Final Plat
of LEISURE LIVING FIRST ADDITION

Dear Mr. Moehring:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, September 7, 1972, the above captioned plat was considered. The action of the Committee was to recommend that this plat be approved, subject to:

1. Approval of the plat is subject to the approval of the associated zone Case Z-1418, "AA" and "LC" to "R-5".
2. The access controls to 13th Street and Rock Road defined within the plat's text shall also be indicated on the face of the plat.
3. The reserves for the private drives, ingress and egress, parking and open space, etc., shall be delineated and labeled on the face of the plat.
4. The "Reserves" shall also be indicated as being reserved for firelane easements within the plat's text.
5. Prior to the time of development, the applicant shall contact the Wichita Fire Department relative to the width, location and design of the interior private drive system which also needs to be utilized as a firelane easement.
6. The applicant shall submit to the Planning Department a copy of a Home Association Agreement which shall include provisions for the improvement of the private drive and parking areas and the continued maintenance thereof, maintenance of the common open space areas, installation and maintenance of sidewalks, etc.

Page 2 - Final Plat of LEISURE LIVING FIRST ADDITION
September 11, 1972

- sewer petition*
K. The applicant shall install or guarantee the installation of sanitary sewer and water to serve subject property.
- letter of credit \$25,000.*
M. The installation of both telephone and electric service shall be underground.
- L. Prior to actual development of the property, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
- OK*
The applicant and/or his engineer shall contact the Engineering Division of the Department of Public Works and the Water Department, relative to indicating needed interior easements on the final plat.
- OK*
The applicant's engineer shall contact M. S. Mitchell of the Maintenance-Flood Control Office relative to some of the dimensions indicated on the plat.
- petition*
N. The applicant shall install or guarantee the construction of sidewalks adjacent to the north side of 13th Street and the west side of Rock Road; the total estimated construction cost to be in the amount of \$3,375.
- OK*
O. Recording of the plat within 30 days after approval by the Board of City Commissioners.

Enclosed with the applicant's copy of this letter is a list of the five methods which have been adopted as being acceptable for guaranteeing improvements required in the approval of plats. Forms for the bond and irrevocable letter of credit are available from this office.

The enclosed "marked" copy of the final plat is for your information and files.

This matter will be forwarded to the Planning Commission for its consideration on Thursday, September 14, 1972, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby
Junior Planner

CLN:rme

Enclosure

cc: Leisure Living, Inc., 5900 East Central, 67208
Robert H. Nelson, Attorney, Olive W. Garvey Bldg., 67202

FINAL PLAT
SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D NO. 72-77 Name LEISURE LIVING FIRST ADDITION
Date Application Rec'd. 7-24-72 Preliminary Approval 8-3-72
Scheduled S/D Meeting 9-7-72

DESCRIPTION

General Location Northwest corner of 13th Street and Rock Road

Owner Leisure Living, Inc.
Surveyor/Engineer Don C. Moehring, II Phone 263-6781
Address 314 Brown Building

- | | | | |
|--------------------------|----------------------|----------------------------------|-----------------|
| 1. Gross Acreage of Plat | <u>7.80</u> | 7. Lineal Feet of New Streets: | |
| 2. Number of Lots: | | a. <u>50</u> R/W <u>1361</u> ft. | |
| Residential | <u>65</u> | b. _____ R/W _____ ft. | |
| Commercial | _____ | c. _____ R/W _____ ft. | |
| Industrial | _____ | d. _____ R/W _____ ft. | |
| Other | _____ | e. _____ R/W _____ ft. | |
| Total Number of Lots | <u>65</u> | TOTAL | <u>1361</u> ft. |
| 3. Minimum Lot Frontage | <u>25.5</u> ft. | 8. Sidewalk adjacent to all | |
| 4. Minimum Lot Area | <u>1,625</u> sq. ft. | streets? <u>yes</u> <u>X</u> no | |
| 5. Existing Zoning | <u>AA & LC</u> | | |
| 6. Proposed Zoning | <u>R-5</u> | | |
9. Public Water Supply No (Yes-No), Name City of Wichita
10. Public Sanitary Sewers No (Yes-No), Name City of Wichita
11. Health Department Approval (where applicable) No (Yes-No)
12. City of Wichita X: Three-Mile Area _____

STAFF COMMENTS:

- A. The associated zone case Z-1418 - "AA" & "LC" to "R-5" was recommended for approval by the Planning Commission on August 24, 1972, subject to platting.
- B. The access controls to 13th Street and Rock Road defined within the plat text shall also be indicated on the face of the plat.
- C. The reserves for the private drives, ingress and egress, parking and open space shall be delineated and labeled on the face of the plat.
- D. It is noted that 10 foot utility easement indicated on the plat adjacent to the west line of subject property, crosses portions of Lots 23, 24, 25, 26 and 27. The applicant shall be advised that no permanent structures can be built on or over the portions of said lots affected by the easement.
- E. The applicant shall submit to the Planning Department a copy of a Homes Association Agreement which shall include provisions for the improvement of the private drive and parking areas and the continued maintenance thereof, maintenance of the common open space areas, installation and maintenance of sidewalks, etc.
- F. The applicant shall install or guarantee the installation of sanitary sewer and water to serve subject property.
- G. The installation of both telephone and electric service shall be underground.
- H. Prior to actual development of the property, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
- I. The applicant and/or his engineer shall contact the Engineering Division (over)

August 7, 1972

Don C. Moehring, C.E.
314 Brown Building
Wichita, Kansas 67202

Subject: S/D 72-77 - Preliminary
Plat of LEISURE LIVING FIRST ADDITION

Dear Mr. Moehring:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, August 3, 1972, the above captioned plat was considered. The action of the Committee was to approve the preliminary and authorize preparation of the final plat, subject to the following:

Approved by P.C. on 8-24-72 subject to platting
A. Approval of the plat is subject to the approval of the associated zone case Z-1418, "LC" and "AA" to "R-5".

OK B. A 25-foot building setback line shall be indicated from the north line of 13th Street North and the west line of Rock Road.

C. "Access control except for 1 opening" adjacent to the north line of 13th Street and the west line of Rock Road, shall be indicated on the final plat.

OK D. A 10-foot utility easement shall be indicated adjacent to the south side of the east-west pipeline easement adjacent to the line of subject property and a 10-foot utility easement shall be indicated adjacent to the west line of subject property.

OK E. A 10-foot utility easement shall be indicated adjacent to the north and west lines of the "exception" to the plat.

OK F. Areas on the plat to be utilized for private drives and parking, and open space recreational uses, shall be indicated on the final plat as reserves and the limits of said reserves shall be defined by use of a solid line.

- ok* The purposes for which the reserves are intended shall be defined within the plat text on the final plat.
- ok* All lot lines shall be dimensioned on the final plat.
- X* The applicant and/or his engineer shall contact the Planning Department regarding adjustments in the proposed lotting arrangements indicated on the plat, so as to take into account possible future design changes in construction plans which could require altering of some of the lot sizes and configurations.
- ok* The applicant shall submit to the Planning Department a copy of a Homes Association Agreement which shall include provisions for the improvement of the private drive and parking areas and the continued maintenance thereof, maintenance of the common open space areas, installation and maintenance of sidewalks, etc.
- ok* *petition on sewer's letter of credit for water*
The applicant shall install or guarantee the installation of sanitary sewer and water to serve subject property.
- X* The installation of both telephone and electric service shall be underground.
- ok* *petitioned*
The applicant shall install or guarantee construction of sidewalks on the north side of 13th Street and the west side of Rock Road; the total estimated construction cost to be determined upon submission of the final plat.
- X* Prior to actual development of the property, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
- ok* The applicant and/or his engineer shall contact the Engineering Division of the Department of Public Works relative to indicating needed interior easements on the final plat or to be dedicated by separate instrument prior to the time of development.
- X* The applicant shall be advised that any adjustments which need to be made to the existing pipeline on subject property because of improvements on said property, shall be at the sole expense of the applicant.

Page 3 - Preliminary Plat of LEISURE LIVING
FIRST ADDITION
August 7, 1972

- 0. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations.
- 1. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

Enclosed herewith is the "marked" copy of the preliminary plat for your information and files.

If you should have any questions concerning this matter, please call.

Sincerely,

Curtis L. Newby
Junior Planner

CLN:rme

Enclosure

cc: Leisure Living, Inc. 5900 East Central, 67208
Robert H. Nelson, Attorney, Olive W. Garvey Bldg., 67202

PRELIMINARY PLAT
SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D NO. 72-77 Name LEISURE LIVING FIRST ADDITION
Date Application Rec'd. 7-24-72 Preliminary Approval
Scheduled S/D Meeting 8-3-72

DESCRIPTION

General Location Northwest corner of 13th Street and Rock Road

Owner Leisure Living, Inc.
Surveyor/Engineer Don C. Moehring, II
Address 314 Brown Building Phone 263-6781

- | | |
|---|---|
| 1. Gross Acreage of Plat <u>7.80</u> | 7. Lineal Feet of New Streets: |
| 2. Number of Lots: | a. <u>50</u> R/W <u>1361</u> ft. |
| Residential <u>60</u> | b. <u> </u> R/W <u> </u> ft. |
| Commercial <u> </u> | c. <u> </u> R/W <u> </u> ft. |
| Industrial <u> </u> | d. <u> </u> R/W <u> </u> ft. |
| Other <u> </u> | e. <u> </u> R/W <u> </u> ft. |
| Total Number of Lots <u>60</u> | TOTAL <u>1361</u> ft. |
| 3. Minimum Lot Frontage <u>25</u> ft. | 8. Sidewalk adjacent to all |
| 4. Minimum Lot Area <u>1,375</u> sq.ft. | streets? <u>yes</u> <input checked="" type="checkbox"/> <u>no</u> |
| 5. Existing Zoning <u>AA & LC</u> | |
| 6. Proposed Zoning <u>R-5</u> | |
| 9. Public Water Supply No (Yes-No), Name <u> </u> | |
| 10. Public Sanitary Sewers <u>NO</u> (Yes-No), Name <u> </u> | |
| 11. Health Department Approval (where applicable) <u>No</u> (Yes-No) | |
| 12. City of Wichita <u> </u> : Three-Mile Area <u> </u> to be annexed | |

STAFF COMMENTS:

- A. Approval of the plat is subject to the approval of the associated zone case Z-1418, "LC" and "AA" to "R-5".
- B. A 25-foot building setback line shall be indicated from the north line of 13th Street North and the west line of Rock Road.
- C. Areas on the plat to be utilized for private drives and parking, and open space recreational uses, shall be indicated on the final plat as reserves and the limits of said reserves shall be defined by use of a solid line.
- D. The purposes for which the reserves are intended shall be defined within the plat text on the final plat.
- E. Since both 13th Street North and Rock Road are major arterial streets, the applicant shall be prepared to discuss at the Subdivision Committee meeting, access controls to said streets in light of his proposed development for subject property.
- F. All lot lines shall be dimensioned on the final plat.
- G. The applicant and/or his engineer shall contact the Planning Department regarding adjustments in the proposed lotting arrangements indicated on the plat, so as to take into account possible future design changes in construction plans which could require altering of some of the lot sizes and configurations.
- H. The applicant shall submit to the Planning Department a copy of a Homes Association Agreement which shall include provisions for the improvement of the private drive and parking areas and the continued maintenance thereof, maintenance of the common open space areas, installation and maintenance of sidewalks, etc.
- I. The applicant shall install or guarantee the installation of sanitary sewer and water to serve subject property.

- J. The installation of both telephone and electric service shall be underground.
- K. Prior to actual development of the property, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
- L. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. The applicant should be prepared to discuss with the Subdivision Committee the manner in which it is proposed to provide for such utilities and facilities, e.g., petition, actual construction, monetary guarantee, etc.
- M. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

FINAL PLAT
SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D NO. 72-77 Name LEISURE LIVING FIRST ADDITION
Date Application Rec'd. 7-24-72 Preliminary Approval 8-3-72
Scheduled S/D Meeting 9-7-72

DESCRIPTION

General Location Northwest corner of 13th Street and Rock Road

Owner Leisure Living, Inc.
Surveyor/Engineer Don C. Moehring, II Phone 263-6781
Address 314 Brown Building

- | | | | |
|---|---|--------------------------------------|---|
| 1. Gross Acreage of Plat | <u>7.80</u> | 7. Lineal Feet of New Streets: | |
| 2. Number of Lots: | <u>65</u> | a. <u>50</u> R/W | <u>1361</u> ft. |
| Residential | | b. _____ R/W | _____ ft. |
| Commercial | | c. _____ R/W | _____ ft. |
| Industrial | | d. _____ R/W | _____ ft. |
| Other | | e. _____ R/W | _____ ft. |
| 3. Minimum Lot Frontage | <u>25.5</u> ft. | TOTAL | <u>1361</u> ft. |
| 4. Minimum Lot Area | <u>1,625</u> sq. ft. | 8. Sidewalk adjacent to all streets? | <u>yes</u> <input checked="" type="checkbox"/> <u>No <input type="checkbox"/></u> |
| 5. Existing Zoning | <u>AA & LC</u> | | |
| 6. Proposed Zoning | <u>R-5</u> | | |
| 9. Public Water Supply | <u>No</u> (Yes-No), Name <u>City of Wichita</u> | | |
| 10. Public Sanitary Sewers | <u>No</u> (Yes-No), Name <u>City of Wichita</u> | | |
| 11. Health Department Approval (where applicable) | <u>No</u> (Yes-No) | | |
| 12. City of Wichita | <u>X</u> : Three-Mile Area | | |

STAFF COMMENTS:

- A. The associated zone case Z-1418 - "AA" & "LC" to "R-5" was recommended for approval by the Planning Commission on August 24, 1972, subject to platting.
- B. The access controls to 13th Street and Rock Road defined within the platting text shall also be indicated on the face of the plat.
- C. The reserves for the private drives, ingress and egress, parking and open space shall be delineated and labeled on the face of the plat.
- D. It is noted that 10 foot utility easement indicated on the plat adjacent to the west line of subject property, crosses portions of Lots 23, 24, 25, 26 and 27. The applicant shall be advised that no permanent structures can be built on or over the portions of said lots affected by the easement.
- E. The applicant shall submit to the Planning Department a copy of a Homes Association Agreement which shall include provisions for the improvement of the private drive and parking areas and the continued maintenance thereof, maintenance of the common open space areas, installation and maintenance of sidewalks, etc.
- F. The applicant shall install or guarantee the installation of sanitary sewer and water to serve subject property.
- G. The installation of both telephone and electric service shall be underground.
- H. Prior to actual development of the property, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
- I. The applicant and/or his engineer shall contact the Engineering Division (over)

of the Department of Public Works relative to indicating needed interior easements on the final plat or to be dedicated by separate instrument prior to the time of development.

- J. The applicant shall be advised that any adjustments which need to be made to the existing pipeline on subject property because of improvements on said property, shall be at the sole expense of the applicant.
- K. The applicant shall install or guarantee the construction of sidewalks adjacent to the north side of 13th Street and the west side of Rock Road; the total estimated construction cost to be in the amount of \$3,375.
- L. The applicant shall be advised that sidewalk construction will be required prior to final building inspection for lots where the sidewalk has been previously required as a condition of platting.
- M. Recording of the plat within 30 days after approval by the Board of City Commissioners.

Map No.: _____
Section No.: _____
Twp. No.: _____
Range: _____

S/D No. _____

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: Leisure Living First Addition

General Location: Northwest Corner of 13th and Rock Road

Name of Property Owner: Leisure Living, Inc.

Address: 5900 East Central Phone: 685-1446

Name of Subdivider: Same % ROBERT H. NELSON, ATTY.

Address: OLIVE W GARVEY BLDG. Phone: 262-3777

Name of Agent/Surveyor: Don C. Moehring II

Address: 314 Brown Building Phone: 263-6781

Date of Application: 6-26-72

SUBDIVISION INFORMATION:

1. Gross Acreage of Plat 7.80
2. Number of Lots: 60
 - Residential 60
 - Commercial _____
 - Industrial _____
 - Other _____
3. Minimum Lot Frontage 25 ft.
4. Minimum Lot Area 1375 sq. ft.
5. Existing Zoning LC & R-1 - COUNTY
6. Proposed Zoning AAE-5 CITY
7. Lineal Feet of New Streets:
 - a. 50 R/W 1361 (in ft.)
 - b. _____ R/W _____ ft.
 - c. _____ R/W _____ ft.
 - d. _____ R/W _____ ft.
 - e. _____ R/W _____ ft.
 - TOTAL 1361 in. ft.
8. Sidewalk adjacent to all streets? yes X no
9. Public Water Supply No (Yes-No), Name City of Wichita
10. Public Sanitary Sewers No (Yes-No), Name City of Wichita
11. Health Department Approval (where applicable) No (Yes-No)
12. ~~City of Wichita~~ Three-Mile Area to be annexed

The owner herein agrees to comply with the Subdivision Regulations for the Wichita-Sedgwick County Metropolitan Area, as approved, and all other pertinent ordinances of the City of Wichita and/or Resolutions of Sedgwick County, Kansas, and Statutes of the State of Kansas. He further agrees that he waives the 60-day statutory period in which the Planning Commission or governing body must act. In addition, it is agreed that all costs of recording the plat and supplemental documents thereto with the Register of Deeds, as well as all costs of publication of initiating resolutions approving any petition for improvements, such as streets, sewer, sidewalks, etc. shall be assumed and paid by the owner, when billed. The undersigned further states that he is the owner of the property proposed for platting.

Owner's Signature: [Signature] President
for Leisure Living, Inc.

Wichita-Sedgwick County Metropolitan Area
Planning Commission, Room 402, City Building
Annex, 104 South Main Street, Wichita, Kansas

Received by [Signature]
Date 7-24-72
Fee Submitted 227.00

Form 223

PAYMENT NOTICE
City of Wichita

PAY AT TREASURER'S OFFICE - FIRST FLOOR

Blds & Elev.	Elec.	Elev. Insp.	Exam. Fees
Hse. Mvr.	Hse. Moving	Licse.	Mech.
Oil Well	Pav. Cuts	Plan.	Plbg. Cert.
Sanitation	Sewer	Signs	Sidewalk
Street	Trailer		

227.83

DESCRIPTION	AMOUNT
plat - Business Building	
First Addition	

Name: Business Building Inc.
 Address: 5900 E. Central
 Type: H9-407103 Due Date: -
 Comments:

Date: 7-24-72 By: Heit